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CIVIL AND POLITICAL RIGHTS INCLUDING THE QUESTION OF FREEDOM OF EXPRESSION

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted in accordance with Commission resolution 1999/36

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Executive summary

This report is the seventh report presented by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, pursuant to Commission resolution 1999/36 of 26 April 1999. The report contains the activities undertaken by the Special Rapporteur, a discussion of pressing issues, a brief summary of urgent appeals and communications to and from Governments as well as final conclusions and recommendations. With regard to the country situations, the Special Rapporteur has sent 11 allegations and 56 urgent actions during the year. It is significant to note that the Special Rapporteur has increasingly joined with other thematic and geographical mechanisms (Special Rapporteur on the question of torture, Special Rapporteur on extrajudicial, summary or arbitrary executions, Chairman of the Working Group on Arbitrary Detention, Special Rapporteur on independence of judges and lawyers, Special Rapporteur on violence against women, its causes and consequences, and Special Rapporteur on the right to education).

During the year under review, the Special Rapporteur has increased cooperation with other United Nations agencies, intergovernmental and non-governmental organizations. He has attended an international workshop on media law reform in Nigeria (16-18 March 1999), two round tables organized by the Government of Canada (June 1999), a meeting with journalists and ministers from Nepal (30-31 August 1999), the International Colloquium on the Freedom of Expression and Defamation organized by Article 19 - the International Centre against Censorship (Colombo, 15-17 September 1999). Moreover, increased cooperation with United Nations bodies was gained during World Press Freedom Day organized by UNESCO (3 May 1999) in Colombia, a working meeting held at UNESCO headquarters in Paris (29 October 1999) as well as a meeting with the Organization of American States Special Rapporteur on freedom of expression and the Organization for Security and Cooperation in Europe Representative on freedom of the media (25-26 November 1999).

An essential aspect of the mandate involves country visits. From 20 to 26 September 1999, the Special Rapporteur undertook a mission to the Sudan. He also visited Ireland from 18 to 22 October 1999 and the United Kingdom of Great Britain and Northern Ireland from 24 to 29 October 1999. Finally, the Special Rapporteur undertook a mission to Tunisia from 6 to 11 December 1999. The Special Rapporteur also requested the Governments of Albania, Argentina, China, Cuba, the Democratic People's Republic of Korea, Egypt, Indonesia, Peru, the Russian Federation, Sri Lanka and Viet Nam to invite him to visit their countries, but he regrets that invitations have not so far been received.

The report also identifies "trends" on the basis of the communications received (more than 1,500 annually from a variety of sources) that will encourage Governments to review practices and take remedial action when required. The Special Rapporteur also directs the attention of Governments to a number of issues of concern and urges them to review existing legislation or adopt new legislation, for example on access to information, criminal libel and defamation, the police and the criminal justice system, and their approach to new technologies.

The Special Rapporteur concludes the report with his recommendations. As the right to freedom of opinion and expression is violated regularly in States with widely different political and institutional frameworks, he urges Governments to scrutinize their domestic legal systems to

bring them in line with international standards. The Special Rapporteur also encourages Governments to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, to amend criminal laws which may be used to infringe article 19 of the Universal Declaration of Human Rights, and to ensure that press offences are no longer punishable by imprisonment. The Special Rapporteur also invites Governments to promote a policy of free access to information with particular regard to the Internet. The Special Rapporteur also expresses his deep concern at the continuing silencing of women and calls upon Governments to remove all obstacles to the exercise of their full right to freedom of opinion and expression. Finally, the Special Rapporteur recommends to Governments, in the light of the continuing pattern of violations of the right to freedom of opinion and expression of human rights defenders, to implement the provisions of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (General Assembly resolution 53/144 of 9 December 1998, annex).

Introduction

1. The present report is the seventh report presented by Mr. Abid Hussain (India), the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. The mandate was established by Commission on Human Rights resolution 1993/45 of 5 March 1993. This report is submitted pursuant to resolution 1999/36, which also renewed the mandate for three years. Section I of the present report contains the terms of reference for the discharge of the mandate. Section II presents an account of the activities undertaken within the framework of his mandate in the past year. Section III provides a brief discussion on a number of issues which the Special Rapporteur considers to be important for the development of the right to freedom of opinion and expression. Section IV contains brief summaries of urgent appeals and communications to and from Governments, along with observations of the Special Rapporteur. Lastly, section V contains the conclusions and recommendations of the Special Rapporteur.

I. TERMS OF REFERENCE

2. The Special Rapporteur refers to his previous reports as regards the mandate and methods of work adopted by him. The structure of the present report is along the same lines as the previous report. The main body of issues includes an analysis of communications received by the Special Rapporteur (in order to highlight trends), access to information, concerns relating to criminal libel and defamation, the police and the criminal justice system, as well as the role of the new information technologies.

II. ACTIVITIES

3. During the period under review, the Special Rapporteur sent 11 allegations and 56 urgent actions. Seeking to avoid unnecessary duplication of the activities of the other thematic special rapporteurs and country-specific rapporteurs, the Special Rapporteur has joined during the past year with the Special Rapporteur on the question of torture on 4 cases of allegations (Azerbaijan, Chad, Democratic Republic of the Congo and Zimbabwe) and on 12 cases of urgent appeals (Belarus, 3 for China, Myanmar, 1 for the Democratic Republic of the Congo, 2 for the Syrian Arab Republic, 2 for Togo, the Islamic Republic of Iran, Zambia). The Special Rapporteur also joined with the Special Rapporteur on extrajudicial, summary or arbitrary executions on 14 cases of urgent actions (Bosnia and Herzegovina, 2 for China, 2 for Colombia, 1 for the Islamic Republic of Iran, 7 for Mexico, 1 for Peru). In the course of the year, 11 urgent actions were written jointly with the Chairman of the Working Group on Arbitrary Detention (Bahrain, Côte d'Ivoire, Cuba, 2 for China, Israel, Kenya, 2 for Nigeria, Palestine, Syrian Arab Republic), 1 case of joint urgent action with the Special Rapporteur on the independence of judges and lawyers (Bahrain), 2 cases of joint urgent action with the Special Rapporteur on violence against women (China, Pakistan) and 1 case of joint urgent action with the Special Rapporteur on the right to education (Malaysia). Moreover, the Special Rapporteur also joined with the Special Rapporteurs on the situation of human rights in the Democratic Republic of the Congo (3 urgent actions) and the Islamic Republic of Iran (3 urgent actions).

4. The Special Rapporteur has received a large number of allegations concerning cases of violations of the right to freedom of opinion and expression in 1999. As was the case in previous

years, the Special Rapporteur was only able to deal with a limited number of requests for information from some Governments, owing to the insufficient financial and human resources to fulfil his mandate in the manner he would deem appropriate. The matters raised in previous reports to the Commission on Human Rights regarding the circumstances of work (E/CN.4/1995/32, paras. 92-95; E/CN.4/1996/39, para. 6; E/CN.4/1997/31, para. 7; E/CN.4/1998/40, para. 3 and E/CN.4/1999/64, para. 3) unfortunately remain a matter of great concern. The mandate requires a substantially increased pool of resources. Within the current constraints, the Special Rapporteur has engaged in an exchange of views with Governments only with regard to a limited number of cases, which are discussed in section IV.

5. It should thus be emphasized that the countries discussed in the respective sections in no way reflect the extent of the problem worldwide, as indeed violations of this right take place in almost every country in spite of the emergence of an increasing number of national institutions which are working for the promotion and protection of human rights.

6. Closer cooperation is engaged by the Special Rapporteur with treaty bodies and human rights field operations, as well as with other specialized bodies within the United Nations system and regional intergovernmental, and non-governmental organizations, particularly at the local level, concerned with the right to freedom of expression. In this regard, the Special Rapporteur noted with great satisfaction that the number of meetings and seminars he attended and had been invited to had tripled over the past year.

7. From 16 to 18 March 1999, the Special Rapporteur attended in Abuja an international workshop on media law reform in Nigeria organized by Media Rights Agenda (MRA), a non-governmental organization based in Nigeria, and Article 19 - the International Centre against Censorship, together with the National Human Rights Commission.

8. In June 1999, he was invited by the Government of Canada to Ottawa where two round tables were organized: one governmental, with the participation of representatives of the Ministries for Foreign Affairs and Justice as well as the Canadian International Development Agency (CIDA), the second a gathering of Canadian NGOs.

9. On 30 and 31 August 1999, the Special Rapporteur went to Nepal where he had the opportunity to meet with the Prime Minister, government ministers and journalists from that country. Matters relating to freedom of speech and writing as well as the need to set up a national commission for human rights were discussed.

10. The Special Rapporteur had also the opportunity to participate in the International Colloquium on Freedom of Expression and Defamation organized by Article 19 in Colombo from 15 to 17 September 1999.

11. In regard to cooperation with intergovernmental organizations, the Special Rapporteur collaborated very closely with Mr. Alain Modoux, Assistant-Director-General and head of the Unit for Freedom of Expression, Democracy and Peace of the United Nations Educational, Scientific and Cultural Organization (UNESCO), who made a statement during the debate on item 11 (c) of the fifty-fifth session of the Commission on Human Rights. The Special Rapporteur was also invited by UNESCO to World Press Freedom Day on 3 May 1999.

in Bogotá and to a working meeting held in Paris on 29 October 1999 with a view to exchanging information and enhancing cooperation. The Special Rapporteur thus made concrete recommendations in his mission reports this year (see report on the mission to the Sudan, E/CN 4/2000/63/Add 1, the report on the mission to the United Kingdom of Great Britain and Northern Ireland, E/CN 4/2000/63/Add 3, and the report on the mission to Tunisia, E/CN 4/2000/63/Add 4) to encourage the use of UNESCO's expertise in the field of media legislation and the training of journalists in coordination with the programme of technical cooperation of the Office of the High Commissioner for Human Rights.

12. A meeting was also organized by Article 19 in London on 25 and 26 November 1999 which brought together for the first time the Special Rapporteur, Abid Hussain; Freimut Duve, the OSCE Representative on freedom of the media; and Santiago Canton, the OAS Special Rapporteur on freedom of expression. During that meeting, which was designed to promote dialogue not only between the special appointees but also with non-governmental organizations working in the field, a joint declaration was issued, setting out the key ways in which Governments should move to guarantee that individuals enjoy the right to freedom of expression, opinion and information (see annex 1). The Special Rapporteur is convinced that such exchanges of experience and increased cooperation with these mechanisms are essential to realize the right to freedom of opinion and expression in all parts of the world. This is the reason why he decided, together with the two other mechanisms, to meet on a more regular basis to discuss their mandates and ways of working in areas of importance.

13. From 26 to 28 May 1999, the Special Rapporteur was invited to attend a workshop on gender integration into the human rights system organized by the Office of the High Commissioner for Human Rights. As Chairman of the meeting, he found this initiative very useful for the special mechanisms of the Commission on Human Rights and took that opportunity to recall that the gender issue is considered with specific attention in his annual and mission reports.

14. In this regard, he held further meetings with the Special Rapporteur on violence against women, its causes and consequences, in order to continue to pay particular attention, as requested by the Commission on Human Rights in resolution 1999/36, to the situation of women and the relationship between the effective promotion and protection of the right to freedom of opinion and expression and incidents of discrimination based on sex, creating obstacles for women with regard to their right to seek, receive and impart information. The Special Rapporteur wishes to reiterate his regrets that constraints of time and resources limited the extent to which the work could be jointly undertaken with the Special Rapporteur on violence against women. This remains an area of critical importance to him and he sincerely hopes that in the near future more deliberate efforts can be made in this area.

15. Additionally, the Special Rapporteur attended the sixth meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures and advisory services programme, held in Geneva from 31 May to 3 June 1999.

16. Furthermore, the Special Rapporteur visited Geneva from 8 to 14 April 1999 for consultations and to present his report to the Commission on Human Rights at its fifty-fifth session. During this period, the Special Rapporteur held a press conference and

organized a briefing for NGOs which was very well attended. He also met with various delegations, in particular representatives of the Government of Canada and ambassadors from France, Malaysia, Hungary and the Islamic Republic of Iran. He discussed his intention to undertake field visits with the Permanent Representatives of the Sudan, Sri Lanka, Tunisia, Egypt and Peru and with representatives of Cuba and the Russian Federation.

17. Finally, the Special Rapporteur considers the carrying out of country visits to be an essential element of the mandate. From 20 to 26 September 1999, the Special Rapporteur undertook a mission to the Sudan. He then visited the Republic of Ireland from 18 to 22 October 1999, followed by a visit to the United Kingdom of Great Britain and Northern Ireland from 24 to 29 October 1999. Finally, the Special Rapporteur undertook a mission to Tunisia from 6 to 11 December 1999. For these four visits, he has submitted separate reports to the Commission at its current session (E/CN.4/2000/63/Add.1, 2, 3 and 4).

18. During the year under review, the Special Rapporteur has sent reminders regarding his wish to undertake a visit to Albania, Argentina, the Democratic People's Republic of Korea, Egypt, Indonesia, Peru, Sri Lanka and Viet Nam to examine in situ the realization of the right to freedom of opinion and expression. In this regard, he regrets that invitations have not so far been received from those countries. Moreover, the Special Rapporteur has also sent additional official requests to visit China, Cuba and the Russian Federation. On 5 July 1999, the Government of China informed the Special Rapporteur that the request was under careful consideration.

19. The Special Rapporteur would like to reiterate that the role of non-governmental organizations in furthering the promotion and protection of the right to freedom of opinion and expression cannot be overestimated. Indeed, it is those organizations which spearhead these concerns and are forcefully advocating, monitoring and lobbying for human rights. Some of them have gone out of their way to volunteer their time to help the Special Rapporteur in his missions. The Special Rapporteur wishes to express his special thanks to Article 19, the International Centre Against Censorship, which continues to provide information and material relevant to the promotion and protection of the right to freedom of opinion and expression to the Special Rapporteur.

III. ISSUES

A. Trends

20. The Special Rapporteur has noted a number of characteristics common to the violations reported to him in the framework of his mandate and believes that it would be helpful to consider what may be called "trends". It is his hope that the identification of these trends will encourage Governments to review practices and take remedial action where required. It is also hoped that this work will assist the OHCHR in developing programmes of technical assistance for interested Governments which will accelerate the process of eliminating the causes of violations of freedom of opinion and expression and associated rights.

21. The Special Rapporteur receives more than 1,500 communications annually from a variety of sources: international, regional, national and local non-governmental organizations; associations of media professionals; trade unions; members of opposition political parties;

human rights defenders and activists; concerned individuals and others. It must be stated that resource constraints do not permit the Special Rapporteur to respond to, or act upon every one of the communications received. These constraints also make it difficult, if not impossible, to verify the facts presented in each and every case in order to determine what, if any, action would be appropriate. That being said, however, it can be stated that these communications are not confined to alleged violations of the rights to opinion, expression and access to information in countries in which the political system and institutional arrangements are implicitly or explicitly undemocratic. It is true, however, that the preponderance of allegations refer to situations where: (a) the legal and institutional protections and guarantees of human rights are, to a greater or lesser degree, circumscribed; or (b) situations of internal armed conflict or severe civil unrest exist. Nonetheless, it is important to note that allegations also refer to incidents and instances in which these rights are infringed or violated in both emerging democracies and countries with long-established democratic institutions, practices and traditions.

22. While some of the communications refer to the same individual case or event or a series of cases in the same country, the majority of them do not. From this, one can only conclude that violations of the rights to opinion, expression, access to information, assembly and association are rampant and may, at any given time, occur anywhere in the world.

23. The Special Rapporteur acknowledges that in a number of countries independent media, professional or collegial associations and non-governmental organizations have been allowed to form and function. In such cases, there may well be a need for training and guidance on, for example, raising professional standards and important skills such as how to develop and thrive in a self-regulating environment. It is the Special Rapporteur's strongly held view that Governments should create and permit an enabling environment in which training and professional development of media persons can be organized and carried out without fear of legal, criminal or administrative sanction by the State.

24. From communications received in the past year regarding repression of, or infringement upon freedom of opinion and expression and the exercise of associated rights, it appeared that in several cases measures or actions were taken by the State, its agents, or an organized non-State entity for reasons such as: (a) out of fear - for example, to cover up wrongdoings and crimes against the people; (b) as a manifestation of an exaggerated sensitivity to criticism of either a professional or personal nature; (c) in aid of the pursuit – by an individual, group, organization or institution – of wealth, privilege and power by any and all means; (d) intolerance of any individual, group or organization perceived to be obstructing such pursuit; (e) out of arrogance or the "might is right" way of thinking in which criticism or inquiry is not tolerated.

25. With these points in mind, the Special Rapporteur directs the attention to the following general trends in terms of violations of freedom of opinion and expression and associated rights

1. Governments taking action sui moto

26. There are cases when Governments characterize media and others seeking to exercise freedom of opinion and expression as, for example, "unpatriotic", "inciting treason", "denigrating the Government", "inciting nationalist xenophobia", propagating "immoral", "extremist and divisive ideas". The response of the authorities, on the basis of these and other characterizations, have included, inter alia: a blackout on reports of civil strife in the country, criminalization of reporting on draft evasion, including the cancellation of licences to publish and broadcast, a ban on cultural magazines, warnings against, and suspension of publications - in one case for having published "too many" reports of a "political nature", a ban on all independent media in a disputed territory, revocation of journalists' licences without reason, expulsion of foreign journalists, without explanation, cancellation of a publishing licence for a newsletter that focused on human rights violations and other issues related to human rights, seizure without explanation of copies of a foreign-based weekly, suspension of broadcasting rights on the basis that previous programming incited prejudice between religions, closure of a radio station that reported on irregularities and nepotism in the public administration, banning of newspapers and books considered, for example, "insulting to the military" or guilty of having published "false and malicious articles", the ban of a moderate newspaper calling for abolition of the death penalty, expulsion of foreign journalists for having sought "to tarnish the image of the country". Communications also indicate that at various times, Governments have threatened to "resort to physical torture" against personnel of independent media that did not support it in a conflict against an armed group or file court cases against journalists and newspapers that publish "lies".

2. Detention or arrest, bringing of charges, trial and sentencing

27. It can be stated that the legal actions taken against journalists and other individuals seeking to exercise their rights to opinion, expression and information remain of epidemic proportion. Publishers, editors, journalists and activists have been arrested, charged, tried and/or sentenced for, inter alia: an unpublished article that was said to be a "call to social disorder", "disturbing public order", "insulting the head of State", "distribution and disclosure of false news", revealing State secrets by publishing classified documents that were embarrassing to the ruling party, caricaturing the State religion, publishing "false and insulting information", publishing "slanderous material, disturbing public opinion and exposing military secrets", publishing an "alarming article" related to activities of a clique of powerful politicians who were funding clashes between clans, regular publication of articles on police corruption, high-handedness and cases of extortion, publishing an article about police torture of a prisoner, refusal to reveal sources, publication of an article critical of the justice system, disclosure of arms purchases by the Government and the statement that this action could threaten the peace process.

28. Criminal penalties have been imposed on a number of grounds, including: libel of a member of Parliament, libel of a private individual, responsibility for public disorder and acts of sabotage, defamation, following publication of stories on corruption, "compromising State security", slander of the national police, establishment of a journalists' union without government permission, fraud and impersonating a journalist, teaching of a banned religion, constituting a crime against national security, publication of an article contrary to the press laws

and "potentially harmful to the morale of the armed forces", contempt of court, following comments about the judiciary and its corruption during a television broadcast, publication of criticism of the Government.

29. Actions against activists and human rights defenders also included, inter alia: arrest for having circulated a petition calling for constitutional change; seizure of all copies of, and prohibition on a book on corruption involving judges and civil servants; arrest of pro-democracy activists and dissidents; efforts to suppress discussion of the social and environmental costs of a controversial irrigation and hydroelectric project; expulsion of student leaders from various universities and institutions of higher learning; accusations of membership in an unauthorized association, distribution of illegal leaflets, insulting the authorities, holding unauthorized meetings; charge, trial and conviction for having written a book about massacres of civilians, in violation of the anti-terror law.

3. Repressive measures in consonance with provisions in press, media and other laws

30. In a number of cases, the punitive and repressive measures taken by the authorities are "legal" inasmuch as there are laws regulating expression, access to information, assembly and association. It must be stated, however, that the legal character of these actions is profoundly at odds with the standards set out in international human rights instruments, most notably the Universal Declaration of Human Rights, which applies to all States, without exception, by virtue of their being a Member of the United Nations, and the International Covenant on Civil and Political Rights, which applies to all States that have ratified or acceded to it.

31. There are laws that penalize, inter alia: disclosure of information of importance to the State; slander of high-level officials of the Government, the armed forces, the judiciary and the clergy; "disturbing public order"; revealing business secrets; contempt of the police, insult to the military. Other laws have the effect of, for example: withdrawing the right of journalists to protect sources; banning free discussion of many vaguely defined topics (e.g. the national constitution in whole or in part); banning a large number of categories of so-called "hate speech"; banning alleged pornography; conferring on the State the power to control and/or dissolve non-governmental organizations considered to have exceeded their mandate or breached a broad range of boundaries; establishing a Government-imposed media council to replace independent, self-regulating councils; preventing press coverage of proceedings in publicly funded governing bodies; defining and restricting the role of news announcers; imposing a temporary ban for "frequent publication" of obscene or indecent material; limiting the practice of journalism only to those journalists who are members of one specific journalists' association; granting to family court judges the power to sanction journalists who publish information on a person's private life or physical disability.

4. Harm to media personnel and others

32. The excessive use of force by the police and other security forces has been consistently addressed by the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the question of torture. The communications received in the past year clearly point out the

dangers inherent in the profession of journalism and decisions by citizens to demonstrate peacefully either in support of or in opposition to Governments and other entities such as opposition political parties.

33. In the past year, measures taken by the police and security forces have included actions against and causing injuries to journalists and photographers covering, for example: a strike called by the main opposition party; a protest march organized by a labour union; the swearing-in ceremony of the new President; the escort of other journalists, by police, to a magistrate's court; a clash between ethnic communities; a public meeting; a confrontation between municipal officers and street vendors; police treatment of protesters participating in a demonstration by Islamic activists; a union blockade and a rally organized by the opposition.

34. Communications also referred to police violence against journalists in the context of, for example: articles written on criminal issues; publication of allegations of embezzlement by public authorities; published criticisms of human rights violations; coverage of sensitive domestic issues; attempts to publicize police harassment.

35. Actions against journalists and others were also taken by various non-State actors that resulted in, inter alia: the mob killing of one journalist; death threats against a woman sculptor on the basis that in their culture sculpting is described as a sin; distribution of a pamphlet accusing journalists and intellectuals of being enemies of the peace process; kidnapping by a rebel group; murder by militant members of a separatist movement; threats by an opposition leader to ban reporters from covering an election campaign; an attack on and occupation of a national radio building by armed attackers; the taking of journalists as hostages by rebels; a bomb attack causing the death of a journalist who was a secularist and critic of a certain religious movement.

36. In addition to these types of actions by individuals or groups that were identified or publicly claimed responsibility, the communications received by the Special Rapporteur also related to violence or threats of violence by unknown persons or groups against members of the media and others. These cases included, for example: murder, possibly in response to published criticism of religious extremism; threats following reports of allegations of favouritism by senior government officials, fighting between government and guerrilla forces, police violence against civilians; threats following publication of articles about, or investigation into political corruption and corruption in prisons; murder of writers, journalists, poets and translators, in some cases possibly by rogue elements of security forces; murder following broadcast of programmes on such topics as corruption among political authorities, the police and military, and violence committed by terrorists and narcotraffickers; threats following harsh criticism of the Government; threats following publication of allegations of forgery and perjury; assault following publication of articles on illicit business deals involving persons in government and private companies.

5. Academic freedom and public demonstrations

37. While less numerous than communications related to violations against members of the media, the Special Rapporteur would also note actions taken by Governments in relation to academic freedom. Information was received about, for example: suppression of research on

such controversial topics as a national independence movement that was active in the past; a ban on campuses of any independent organizations that are considered political; refusal of permission to hold a seminar on human rights; State-supported harassment of independent libraries that were established to provide access to materials to which there is no access in State institutions; charges of having published a play that was considered blasphemous; charges against and conviction of the head of a political science department, who was also a contributor to a student magazine, for having defamed the religion of the State.

38. With regard to public demonstrations, the Special Rapporteur not only underscores the frequency with which communications are received about the excessive use of force by police and security forces in response to demonstrations, marches and other manifestations, but notes such other concerns as: a requirement of prior notification; measures to prevent public commemoration of a major event; arrest of students demonstrating peacefully and calling for "freedom of thought and expression for all without exception"; arrest of labour leaders during a nationwide strike by civil servants and distribution of "Wanted" posters on more than 20 others; prosecution of workers for demonstrating in the streets and a verbal attack by a judge against a radio station reporting on the protests.

6. Other concerns

39. While less common than other types of communications, information was received by the Special Rapporteur on several other issues which are of concern. These included, inter alia, a case in which action was taken against a "whistle-blower" who revealed information on wrongdoing and non-disclosure of relevant personal information (bank holdings) by senior officials. Other communications referred to the State monopoly on radio and television, and the firing, apparently for political reasons, of employees of the State-owned broadcasting corporation who were characterized as "opposition supporters". Concern has also been expressed about the practice in some States of releasing persons from prison or detention and ordering them to be held under house arrest with severe restrictions on their freedom of movement and their rights to opinion, expression and access to information.

40. It will be recalled that in previous reports, the Special Rapporteur expressed his concern about the use and abuse of national security laws to suppress opinion, expression and information. Again, while less common than other types of information received, communications did refer to declarations of states of emergency, the effect of which was, inter alia, to forbid the printing, broadcasting or communicating of information which is seen to incite violence or to cause racial or communal disharmony; or forbid information "prejudicial" to the State or that is likely to cause "disaffection" with the Government or "hatred or contempt" for the administration of justice or national security.

41. The Special Rapporteur cannot help but view with dismay the content of the communications received in the past year. Clearly, in several cases the rights to freedom of opinion, expression and information are violated in States with widely different political systems and institutional frameworks for governance. In a number of cases these rights do not enjoy even the minimum protections and guarantees set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and associated international human rights instruments.

B. Access to information

42. In resolution 1999/36, the Commission on Human Rights invited the Special Rapporteur "to develop further his commentary on the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, and to expand on his observations and recommendations arising from communications". With this in mind, the Special Rapporteur wishes to state again that the right to seek, receive and impart information is not merely a corollary of freedom of opinion and expression; it is a right in and of itself. As such, it is one of the rights upon which free and democratic societies depend. It is also a right that gives meaning to the right to participate which has been acknowledged as fundamental to, for example, the realization of the right to development.

43. Clearly, there are a number of aspects of the right to information that require specific consideration. The Special Rapporteur wishes to emphasize in this report, therefore, his continuing concern about the tendency of Governments, and the institutions of Government, to withhold from the people information that is rightly theirs in that the decisions of Governments, and the implementation of policies by public institutions, have a direct and often immediate impact on their lives and may not be undertaken without their informed consent. The Special Rapporteur therefore endorses the set of principles that have been developed by the non-governmental organization Article 19 - the International Centre against Censorship (see annex II). These principles, entitled "The Public's Right to Know: Principles on Freedom of Information Legislation", are based on international and regional law and standards, evolving State practice, and the general principles of law recognized by the community of nations.

44. On that basis, the Special Rapporteur directs the attention of Governments to a number of areas and urges them either to review existing legislation or adopt new legislation on access to information and ensure its conformity with these general principles. Among the considerations of importance are:

- Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information; "information" includes all records held by a public body, regardless of the form in which it is stored;

- Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how the public body functions and the content of any decision or policy affecting the public;

- As a minimum, the law on freedom of information should make provision for public education and the dissemination of information regarding the right to have access to information; the law should also provide for a number of mechanisms to address the problem of a culture of secrecy within Government;

- A refusal to disclose information may not be based on the aim to protect Governments from embarrassment or the exposure of wrongdoing; a complete list of the legitimate aims which may justify non-disclosure should be provided in the law and exceptions should be narrowly drawn so as to avoid including material which does not harm the legitimate interest;

- All public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information; the law should provide for strict time limits for the processing of requests for information and require that any refusals be accompanied by substantive written reasons for the refusal(s);

- The cost of gaining access to information held by public bodies should not be so high as to deter potential applicants and negate the intent of the law itself;

- The law should establish a presumption that all meetings of governing bodies are open to the public;

- The law should require that other legislation be interpreted, as far as possible, in a manner consistent with its provisions; the regime for exceptions provided for in the freedom of information law should be comprehensive and other laws should not be permitted to extend it;

- Individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing, viz. the commission of a criminal offence or dishonesty, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty or serious failures in the administration of a public body.

C. Criminal libel and defamation

45. It will be recalled that in his report to the 1999 session of the Commission on Human Rights (E/CN.4/1999/64) the Special Rapporteur addressed the issue of criminal libel. It will also be recalled that in his report to the fifty-first session, the Special Rapporteur stated that, "the principle of proportionality must be strictly observed for the purpose of preventing the undermining of the freedom of expression" in terms of the legal protection against "any *intentional* infringement on the honour and reputation by untrue assertions" (emphasis added) (E/CN.4/1995/32, para. 47).

46. The Special Rapporteur was both astonished and alarmed at the number of communications received in the past year referring to accusations of libel and defamation against members of the media - publishers, editors and journalists. A review of the many communications received yields a list of cases relating to, for example:

- Defamation and damages awarded in connection with reports on corruption at the presidential palace;

- A claim for damages by a former member of the intelligence services;

- Defamation following publication of an article on nepotism in the awarding of public contracts;

- Libel of a member of Parliament (with a sentence of up to five years' imprisonment);

- Libel of a private individual (with a sentence of up to five years' imprisonment);

- Defamation arising from publication of stories on corruption;

- Damages for libel and a sentence of four months in prison;

- Libel following publication of an article on corrupt business practices;

- Accusations of repeated aggravated defamation of members of the board of a rival daily newspaper;

- Defamation causing injury to a parliamentary member for the Government (one year suspended sentence);

- A prison term of three years and a fine for having published libellous statements against the wife of a member of a national assembly;

- One year's suspended sentence for having insulted the honour of a member of Parliament;

- Provisions in law establishing prison terms of one to three years for contempt of the President and the police;

- A sentence of one to six years for insulting the military.

47. These and other cases and incidents have had a direct and negative impact on freedom of expression, access to information and the free exchange of ideas. The climate created by such suits causes writers, editors and publishers to be reluctant to report on and publish matters of public interest not only because of the large awards granted in these cases but also because of the high costs of defending such actions.

48. Criminal defamation laws represent a potentially serious threat to freedom of expression because of the very sanctions that often accompany conviction. It will be recalled that a number of international bodies have condemned the threat of custodial sanctions, both specifically for defamatory statements and more generally for the peaceful expression of views. For example, since 1994, the Human Rights Committee has expressed concern about the possibility of custodial sanctions for defamation in a number of countries. Similarly, the Declaration of Sana'a, adopted on 11 January 1996 by the United Nations/UNESCO Seminar on Promoting Independent and Pluralistic Arab Media states that "disputes involving the media and/or the media professionals in the exercise of their profession ... should be tried under civil and not criminal codes and procedures."

49. The Special Rapporteur has also noted that authoritative international human rights bodies have established a number of principles which restrict the legitimate scope of civil defamation and insult laws. For example, in 1995, in *Tolstoy Miloslavsky v.*

the United Kingdom, the European Court of Human Rights drew a link between the imposition of excessive sanctions and a chilling effect on freedom of expression and ruled that excessive damages for defamation violated article 10 of the European Convention on Human Rights.

50. International jurisprudence also supports the view that Governments and public authorities as such should not be able to bring actions in defamation or insult. The Human Rights Committee has, for example, called for the abolition of the offence of "defamation of the State". While the European Court of Human Rights has not entirely ruled out defamation suits by Governments, it appears to have limited such suits to situations which threaten public order, implying that Governments cannot sue in defamation simply to protect their honour. A number of national courts (e.g. in India, South Africa, the United Kingdom, the United States, Zimbabwe) have also refused to allow elected and other public authorities to sue for defamation.

51. On the issue of a strict standard of truth, the Special Rapporteur notes that such a standard may be excessively onerous; as a result, courts in a number of countries have mitigated the strict truth requirement, at least for material relating to matters of public interest, by recognizing a defence of non-malicious or reasonable publication. This approach is reflected in a case decided by the European Court of Human Rights (*Bladet Tromso and Stensaas v. Norway*, 20 May 1999, Application No. 21980/93); the Court held that even though certain allegations had been shown to be false, the applicant newspaper and editor should not be liable in defamation because, taking into account all relevant factors, the decision to publish had been reasonable.

52. In light of these and other concerns, the Special Rapporteur wishes to state again that it is critical to raise public consciousness to ensure that defamation laws are not used (or abused) to stifle open public debate of matters of general or specific interest. Once again, at minimum, it must be understood that:

- Criminal defamation laws should be repealed in favour of civil laws as the latter are able to provide sufficient protection for reputations;

- Sanctions for defamation should not be so large as to exert a chilling effect on freedom of opinion and expression and the right to seek, receive and impart information; penal sanctions, in particular imprisonment, should never be applied and damage awards should be strictly proportionate to the actual harm caused;

- Government bodies and public authorities should not be able to bring defamation suits; the only purpose of defamation, libel, slander and insult laws must be to protect reputations and not to prevent criticism of Government or even to maintain public order, for which specific incitement laws exist;

- Defamation laws should reflect the importance of open debate about matters of public interest and the principle that public figures are required to tolerate a greater degree of criticism than private citizens;

- To require truth in the context of publications relating to matters of public interest is excessive; it should be sufficient if reasonable efforts have been made to ascertain the truth;

- With regard to opinions, only patently unreasonable views may qualify as defamatory; defendants should never be required to prove the truth of opinions or value statements;

- The onus of proof of all elements should be on those claiming to have been defamed rather than on the defendant;

- In defamation and libel actions, a range of remedies should be available in addition to damage awards, including apology and/or correction.

D. The police and the criminal justice system

53. In several countries, there is an overall need for overhauling the criminal justice system. Oral evidence and witnesses continue to be the main plank on which the prosecution case rests. The trustworthiness of witnesses has increasingly come under attack. The emphasis therefore must be shifted to more scientific investigation to make the system truly one that promotes justice and is not merely a weapon in the hands of the prosecution or the police. Perhaps there should be a police complaints authority for redress of complaints. The number of complaints against police handling of cases in the area of freedom of expression is on the increase. These are complaints relating to high-handedness, arbitrary detention and falsely implicating persons. There should also be a police security commission to ensure that police are protected from political interference. There should also be a massive programme for training of the magistracy under the aegis of high courts.

E. The new technologies

54. In his previous reports (E/CN.4/1999/64 and E/CN.4/1998//40), the Special Rapporteur underlined the importance and role of the new technologies, in particular the Internet and satellite dishes, in the free flow of information, ideas and opinions. It will also be recalled that he has encouraged Governments to view the Internet and other information technologies as means to achieve a plurality of voices and to take steps aimed at their integration into the development process. Information received by the Special Rapporteur suggests, however, that Governments have increasingly placed greater attention on control and regulation of these technologies than they have on expansion of existing networks, on upgrading technical capacities to reach under- or unserved areas, and on permitting the establishment of new information networks and exchanges. Hence, the Special Rapporteur will briefly examine two areas of related interest: first, the link between printed and electronic media within a controlled and censored environment, and second, the type and degree of controls applied to new technologies.

55. The Special Rapporteur believes that there is a clear link between the printed media and the electronic media. The Internet and satellites dishes, two main components of the "information revolution", can play an influential role in bringing out dissenting voices and shaping the political and cultural debate. Indeed, the Internet is a unique communication medium due to its global, decentralized, interactive and, not least, infrastructure-independent

nature which allows it to transcend national barriers. Similarly, satellite dishes have the potential to create a public sphere in societies where State coercion has pushed debate into the background. Hence, electronic media are a significant experiment in terms of bypassing boundaries defined strictly in terms of national and territorial integrity. However, they are not a good substitute for the printed media which remain the most accessible source of information. Internet sites, for instance, can be welcomed as a means to support advocacy of cultural and political rights, yet they remain inaccessible to the majority of the population owing to financial, economic and technological constraints. Moreover, while representing a global phenomenon, Internet users are concentrated in Western developed countries. Therefore, the new technologies provide only a temporary solution to the legal and coercive pressure applied to the domestic media and often they will encounter the same hostility and intimidation. However, the Special Rapporteur believes that the Internet, as a cheap and fast mode of transmission, is an important pool of information for the purpose of gathering information regarding legal and extralegal proceedings to curb freedom of expression while satellite dishes are easily accessible even in the most remote areas.

56. With regard to the type and degree of controls applied to the new technologies, a review of the communications received in the past year, as well as information previously brought to the Special Rapporteur's attention, illustrates the ambivalence that still characterizes much of the discussion about the appropriate use and the avoidance of abuse of the Internet. In general, most Governments have sought to address the problems raised by the dissemination and proliferation of pornography, in particular child pornography, and materials produced by neo-nazi and/or other "hate groups". These concerns are legitimate. The Special Rapporteur believes, however, that the dangers posed by such materials on the Internet can be adequately addressed through the judicious application of existing international standards and national laws consistent with international standards governing freedom of opinion and expression and the right to seek, receive and impart information. At the same time as efforts are being made in response to pornography and hate speech, other measures are being taken that cannot, by any reasonable definition, be accepted as consistent with international standards. These measures have included, in certain countries, the requirement that the information accessible through the Internet be "trustworthy" and in line with the country's "ethical principles", or efforts to control information viewed as threatening to political stability and undermining the predominant culture, or some proposals by State police to monitor all data sent over the Internet within national boundaries.

57. It will be recalled that in his report to the fifty-fourth session of the Commission on Human Rights (E/CN.4/1998/40) the Special Rapporteur stated: "The new technologies and, in particular, the Internet are inherently democratic, provide the public and individuals with access to information sources and enable all to participate actively in the communication process. Action by States to impose excessive regulations on the use of these technologies and, again, particularly the Internet, on the grounds that control, regulation and denial of access are necessary to preserve the moral fabric and cultural identity of societies, is paternalistic. These regulations presume to protect people from themselves and, as such, they are inherently incompatible with the principles of the worth and dignity of each individual. These arguments deny the fundamental wisdom of individuals and societies and ignore the capacity and resilience of citizens, whether on a national, State, municipal, community or even neighbourhood level, often to take self-correcting measures" (para. 45).

58. In the time since the report to the fifty-fourth session of the Commission was prepared, nothing has occurred that would cause the Special Rapporteur to revise his recommendation that the new information technologies, including the Internet, be considered in light of the same international standards as other means of communication and that no measures be taken which would unduly restrict freedom of expression and information. On-line expression should be guided by international standards and be guaranteed the same protection as is awarded to other forms of expression.

IV. COUNTRY SITUATIONS

Angola

Communication sent

59. On 20 October 1999, the Special Rapporteur sent an urgent appeal concerning the arrest and detention of Mr. Rafael Marques, journalist of the newspaper *Folha Otto* and a human rights activist. According to the source, Mr. Marques was arrested on 16 October 1999 by the Department of National Criminal Investigations in Luanda. He is currently detained at Viana prison and has allegedly been refused access to his lawyer. According to the source, he was charged on 14 October 1999 under a 1978 law, said to have been technically repealed in 1991, with defaming President dos Santos in an article published in July.

Observations

60. The Special Rapporteur welcomes the release on bail of Rafael Marques on 25 November 1999 and thanks the Government for its reply.

Azerbaijan

Communication sent

61. On 15 November 1999, the Special Rapporteur sent a joint communication with the Special Rapporteur on the question of torture concerning the following cases: Smira Mamigdze, Ilahme Mamigdze, Zamina Alliguze and a fourth female journalist who were reportedly injured on 16 November 1998 when the police violently dispersed a group of journalists demonstrating against a suit brought against the newspaper *Yeni Musavat*; Aydin Bagirov, Mustafa Hajibeyli and Sahil Kerimli, all journalists, who were allegedly beaten and detained by police on 15 August 1998; Natig Kavadli, journalist, who was reportedly beaten and detained by police officers while covering a political rally; Haji Zamin, journalist, who was reportedly taken on 22 August 1998 to a police station where he was verbally abused; Taleh Hamid, editor of the newspaper *Mustigil*, who was allegedly beaten on 1 September 1998 by police officers; Zakir Jabbarly and Dilgam Bayramov, both correspondents for the *Mozalan* newspaper, who were reportedly verbally and physically assaulted on 22 September 1997 by employees of the passport department while researching the alleged illegal registration of citizens; Aygun Ismaylov, journalist, who was reportedly also seized; Ilham Shaban, journalist, is said to have been beaten by the police on 7 November 1998 during a demonstration.

Observations

62. A response from the Government is still awaited.

Bahrain

Communication sent

63. On 6 July 1999, the Special Rapporteur sent a joint urgent action to the Government of Bahrain with the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers on the case of Mr. Sheik Al-Jamri, a 62-year-old religious scholar and former member of the National Assembly. Mr. Al-Jamri, who has been in prison without trial since January 1996, was said to be sentenced to a long prison term for his opposition activities. He was arrested along with seven other prominent Shia Muslim clerics, apparently in connection with a petition he circulated calling for constitutional change.

Observations

64. The source informed the Special Rapporteur that Sheikh Abdul Amir al Jamri was convicted on 7 July 1999 and sentenced to a 10-year prison sentence by a Bahraini security court. However, according to additional information, he was released on 8 July 1999 and has returned to his village promising not to engage in further political activities.

Bangladesh

Communication sent

65. On 11 November 1999, the Special Rapporteur sent an allegation concerning the attack by the police on 1 November 1999 against Sanual Huq and Anisur Rahman, press photographers respectively of *The Independent* and the *Daily Star* newspapers, during a protest led by opposition parties. Moreover 13 journalists were reportedly attacked by the police while covering political demonstrations between 21 and 23 October 1999, including Amran Hossain, Rafiqur Rahman and Khalid Haider, journalists respectively with *Daily Star*, *Reuters Photo* and *Dainik Dinkal*. On 22 October 1999, according to the source, 10 cameramen and photographers, who were covering riots between police and Islamic extremists, were beaten up by the police in the streets of Dhaka. According to the information received, the journalists were: Joy of *Banglabazar*, Abdur Razzak of *Dainik Sangram*, Enamul Huq Kabir of *Muktakantha*, Subir of *Dainik Arthaneeti*, Salimullah Salim of *New Nation*, Bulbul Ahmed of *The Independent*, Faruque Ahmed of *UNB*, Swapan Sarker of *Dainik Banglar Bani*, Matiur Rahman Tuku and Mamum Talukder of *Ajker Kagoj*.

Observations

66. A reply from the Government is still awaited.

Belarus

Communications sent

67. On 6 October 1999, the Special Rapporteur sent an urgent action to the Government of Belarus concerning the disappearance of Mr. Anatoly Krasovsky, head of Krasika publishing house, and Mr. Victor Gonchar, vice-speaker of the Thirteenth Supreme Soviet. Concern was expressed regarding suggestions that there may have been official involvement, as on 1 March 1999 the police arrested Mr. Gonchar on charges of holding an illegal meeting in a private café, for which he served 10 days' imprisonment.

68. On 21 June 1999, the Special Rapporteur transmitted an allegation asking for further details about the January 1998 amendment to article 5 of the Law on the Press and raising the following cases: on 15 February 1999, the Press Committee had issued official warnings to six independent newspapers, the *Belorusskaya Delovaya Gazeta*, *Narodnaya Volya*, *Belorusskaya Gazeta*, *Bellorrusky Rynok*, *Imya* and *Navimy* for having published information on alternate presidential elections on 16 May 1999. Opposition leaders had also been warned and the Ministry of Justice issued a warning threatening to ban 13 opposition parties and non-governmental organizations in connection with their participation in those elections. It was also alleged that on 12 May 1999, the Vice-Chairperson of the Mahileu region electoral commission, Anatol Fiodaraw, was sentenced to three days' administrative arrest for failing to appear in court and that Ales Barel and Kazimir Lokic were also detained at a polling station. At the end of March 1999, the former Prime Minister, Mikhail Chigir, was reportedly imprisoned for his active role in the Belarus opposition and for his intention to stand as a presidential candidate in the alternate presidential elections. Yuri Zakharenko, former Minister of the Interior and a senior figure in the opposition movement, was reportedly abducted on 7 May 1999 in Minsk by individuals linked to the State Security services, presumably for being a member of the alternate electoral commission.

69. On 10 March 1999, the Special Rapporteur sent a joint urgent action with the Special Rapporteur on the question of torture concerning the case of Victor Gonchar, a 42-year-old opposition leader who appears to have been targeted by the authorities solely because of his peaceful opposition activities. He and 15 other members of the opposition were reportedly detained on 25 February 1999 during a peaceful meeting in a café. All were released pending trial but reportedly charged under the Administrative Code of Belarus with holding an unsanctioned meeting. On 1 March, Viktor Gonchar was reportedly arrested again and later sentenced by a Minsk court to 10 days' imprisonment under the same code for organizing an unsanctioned meeting.

Communications received

70. In its communication of 12 October 1999, the Government includes the press release issued by the Ministry of the Interior on the case of Mr. V. Gonchar and Mr. A. Krasovsky. The Minsk Prosecutor's Office, in accordance with article 101 of the Criminal Code, has initiated legal proceedings.

71. The Special Rapporteur also acknowledges the communication received on 27 April 1999 which provides further details on the above cases. It is mentioned that Mr. Gonchar was sentenced to 10 days' detention in a special holding facility following an unauthorized meeting in violation of article 167-1, paragraph 1, of the Administrative Offensive Code. On 1 March the Minsk Lenin District Court sentenced him.

72. The Government of Belarus also replied in its communication of 28 September 1999 to the concern raised in the allegation sent on 21 July 1999. It provides information on the registration of public associations, the administrative arrest of A.F. Federov, Ales Barel and Kazimir Lokik, and the legitimacy of the warning served on six independent Belarusian newspapers and the detention of former Prime Minister Chigir.

Observations

73. The Special Rapporteur thanks the Government for its replies which shows its willingness to cooperate. However, he remains extremely concerned about the disappearance of Mr. Gonchar and Mr. Krasovsky.

Bosnia and Herzegovina

Communication sent

74. On 25 October 1999, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the assassination attempt, on 22 October 1999, against Mr. Zeljko Kopanja, editor in chief of the Bosnian Serb independent *Nezavisne Novine*, which resulted in the loss of both his legs and serious injuries to his abdomen. According to the information received, Mr. Kopanja's attempted assassination was linked to articles he had published concerning war crimes committed by Serbs against Muslims, and to his questioning the authorities' lacklustre efforts to apprehend suspected war criminals.

Observations

75. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply.

Bulgaria

Communication sent

76. On 5 October 1999, an allegation was sent to the Government of Bulgaria concerning Alexei Lazarov, a journalist for the independent weekly *Kapital* ,who was reportedly attacked on 28 June 1999 by three unidentified assailants. According to the source, the assault appears to have been connected with an article in which Mr. Lazarov analysed the local media coverage of the privatization of the Bulgarian Telecommunications Company and criticized a deputy, P.M. Evgenii Bakardzhiev. Moreover, the Special Rapporteur raises the case of

Ms. Anna Zarkova, journalist of the daily *Trud*, who was violently attacked on 11 May 1998 when a group of assailants threw acid on her. According to the information received, Ms. Zarkova had received numerous threats for her coverage of organized crime and political corruption in Bulgaria.

Observations

77. No reply from the Government has been received so far.

Chad

Communication sent

78. On 3 September 1999, the Special Rapporteur, together with the Special Rapporteur on the question of torture, transmitted an allegation to the Government concerning Sosthène Ngargoune, Chairman of the Union of Chadian Journalists who had allegedly been severely beaten by members of the armed forces of the Federal Republic after meeting up with the government forces whom he was interviewing on 25 October 1997 in the Moundou police station. His camera and tape-recorder were reportedly confiscated. It is further alleged that he had been arrested previously on 14 May 1998 and charged with defamation and libel in connection with the publication of an article in his newspaper the *N'Djamena Hebdo*.

Observations

79. The Special Rapporteur regrets that no reply had been received from the Government at the time the report was finalized.

Chile

Communication sent

80. On 17 June 1999, the Special Rapporteur sent an urgent action concerning the arrest of Alejandra Matus, author of *El Libro Negro de la Justicia*, Bartolo Ortiz, General Director of *Editorial Planeta*, and Carlos Orellana, an editor of the latter. Servando Jordán, the judge of the Supreme Court of Justice, is alleged to have brought a complaint against the book on the basis of article 6 of the Internal State Security Act which provides for penalties for persons using terms considered to be defamatory against senior government officials, the armed forces, the judiciary and the clergy. The book in question is allegedly the result of a detailed investigation into corruption in the Chilean judiciary and its support for the military junta of the Pinochet Government. According to the information received, on 14 April 1999 Rafael Huertas, the judge of the Court of Appeal ordered the confiscation of all copies of the book and the arrest of Alejandra Matus. On 16 June 1999 Mr. Ortiz and Mr. Orellana were allegedly arrested for violating the above Act.

Observations

81. The Special Rapporteur welcomes the release of Bartolo Ortiz and Carlos Orelana on 18 June 1999.

China

Communications sent

82. On 3 November 1999, the Special Rapporteur sent an urgent appeal to the Government of China concerning the arrest and detention of Mr. Jiang Qisheng, a pro-democracy activist. According to a source, Mr. Jiang was tried on 1 November 1999 for propagating and instigating subversion. Allegedly Mr. Jiang is charged for writing an open letter to the Chinese public calling for the collective commemoration of the tenth anniversary of the 1989 democracy movement.

83. On 17 August 1999, the Special Rapporteur sent a joint urgent action jointly with the Special Rapporteur on the question of torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning Zulikar Memet, who was reportedly sentenced to death on 25 July 1999 by the Ili Prefecture Intermediate People's Court in the Xinjian Uighur Autonomous Region. It is alleged that he was accused of involvement in "ethnic separatist activities" and he told the court that his confession had been extracted under torture. His brother Hemit Memet, as well as eight other unidentified individuals, have also been sentenced to death (see para. 85 below).

84. On 16 June 1999, the Special Rapporteur sent an urgent action, together with the Chairman-Rapporteur of the Working Group on arbitrary detention, concerning the detention of Mr. Jiang Qisheng. According to the source, Mr. Qisheng, said to be critical of the Government, gave an interview to *The Boston Globe* the day before his arrest on 17 May 1999. Allegedly, Mr. Qisheng was earlier imprisoned for 17 months for his involvement in the 1989 pro-democracy movement.

85. On 14 June 1999, the Special Rapporteur transmitted a joint urgent action with the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning Zulikar Memet and Saydakhmet Memet, who were reportedly detained in Urumqi, the capital of Xinjiang Uighur Autonomous Region, in 1998 and February 1999, respectively. It was reported that they were accused of "assisting separatists/terrorists" and arrested because they are brothers of Hemet Memet, who was previously detained on 11 February 1999 along with Kasim Mahpir and Ilyas Zordun: all were reportedly accused of involvement in "ethnic separatist activities". A joint urgent action was sent on 17 February 1999 on these three persons as well.

86. On 10 December 1998, the Special Rapporteur transmitted a joint urgent action together with the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women concerning the cases of two Tibetan nuns, Ngawang Sandgrol and Ngawang Choezon, detained at the Drapchi prison in Tibet. The two nuns are said to be in

extremely poor physical condition after having been subjected to harsh interrogation and ill-treatment and placed in solitary confinement after violent suppression of demonstrations by prisoners inside Drapchi prison on 1 and 4 May 1998.

87. On 9 December 1998, the Special Rapporteur sent a joint urgent action with the Chairman-Rapporteur of the Working Group on Arbitrary Detention concerning the arrest and detention of Wang Youcai, Xu Wenli and Qin Yongmin, Chinese citizens involved in the organization of the Chinese Democratic Party. According to information received, Wang Youcai was arrested on 30 November 1998 and is currently held in a State security detention centre in Zhejiang province and on 1 December 1998, Xu Wenli was arrested together with Qin Yongmin on suspicion of damaging State security.

Communications received

88. The Government of China, on 24 February 1999, provided the Special Rapporteur with information regarding the case of Ngawang Sangdrol who was sentenced in November 1992 to three years' imprisonment on charges of separatist activities by the Lhasa Municipal Intermediate People's Court. In 1993, 1996 and 1998 her sentence was further extended to a total of 15 years. The Government states that beating and ill-treatment by government guards is inconsistent with the facts.

89. The Government of China on 2 February 1999 informed the Special Rapporteur that Xu Wenli, Wang Youcai and Qin Yougmin, all three of them of Han nationality, had their jail sentences and deprivation of political rights extended because they were recidivist in their incitement to subversion of State power.

Observations

90. The Special Rapporteur thanks the Government of China for its replies.

Colombia

Communications sent

91. On 23 April 1999, the Special Rapporteur sent a joint urgent action with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the death threats received by the Colombian editor Gerardo Rivas Moreno in the form of a hand-written note accompanied by magazine clippings. It is said that the note was signed by the paramilitary "United Self-Defence Groups of Colombia". These death threats could be connected with Mr. Rivas Moreno's work as literary editor and specifically with the translation of the complete works of Simon Bolivar. It is thought that Mr. Rivas might have been confused with one of the members of the so-called "Bolivarianos Group", the name given by the Colombian revolutionary armed forces to its pro-Simon Bolivar political movement.

92. On 10 June 1999, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent a communication to the Government of Colombia in reply to its letters of 7 and 10 May 1999 requesting more details regarding the death

threats to the Colombian editor Gerardo Rivas Moreno by the paramilitary group "Autodefensa Unificada de Colombia". The Special Rapporteurs asked to be kept informed about the investigation in relation to this case as well as the measures taken to protect the life and the right to freedom of opinion and expression of Mr. Rivas Moreno.

Communications received

93. By letters dated 7 and 10 May 1999, the Government requested the Special Rapporteur to submit additional information regarding the case of Mr. Rivas Moreno. On 29 July 1999, the Government informed the Special Rapporteurs that it was not in a position to submit information on the case of Mr. Rivas Moreno since the Special Rapporteurs themselves could not provide it with additional details. Nevertheless, the Government of Colombia replied on 27 August 1999 that the Anti-Abductions Unit of the Public Prosecutor's Office in Bogotá was conducting investigations into the incident regarding the case of Mr. Rivas Moreno. According to the Government, Mr. Rivas Moreno was recalled on 12 July 1999 to provide more information about his complaint and the Technical Investigations Corps was asked to appoint an investigator to seek to identify the perpetrator of the offence.

94. The Government of Colombia also sent a communication on 30 July 1999 regarding the provisions governing compulsory military service and the recruitments of minors by insurgent groups.

Observations

95. The Special Rapporteur wishes to thank the Government for its reply concerning Mr. Gerardo Rivas Moreno, in particular in the light of the difficulty of gathering information on this specific case. However, he remains very concerned about the current situation in Colombia with regard to the abductions, death threats, and even murders of journalists (seven during the period under consideration) and persons seeking to exercise their right to freedom of opinion and expression.

Côte d'Ivoire

Communication sent

96. On 3 November 1999, a joint urgent action was transmitted by the Special Rapporteur to the Ivorian Government with the Chairman-Rapporteur of the Working Group on Arbitrary Detention concerning the detention of Raphaël Lakpe and Jean Khalil Sylla, editor-in-chief and journalist respectively of the *Le Populaire* daily newspaper. According to the information received, they were arrested in April 1999 and sentenced to six months' detention for the dissemination of false information and for activities likely to disturb law and order. They were allegedly arrested because on 28 April 1999 their newspaper published an article entitled "One student killed and four others seriously injured", whereas the students in question had only been injured by the police.

Communication received

97. On 8 November 1999 the Ivorian Government acknowledged receipt of the joint urgent action of 3 November 1999 and informed the Special Rapporteur that Mr. Raphaël Lakpe and Mr. Jean Khalil Sylla had been sentenced for defamation but had since been released.

Observations

98. The Special Rapporteur welcomes the release of these two journalists, thanks the Government for the information it provided but nevertheless hopes to receive more detailed information about the sentencing of these two persons for defamation.

Cuba

Communications sent

99. On 19 March 1999, the Special Rapporteur transmitted an allegation expressing concern at the arrest, detention, harassment, assault and beatings that took place between October 1998 and March 1999 with regard to journalists and human rights activists. Some of them were reportedly harassed as well as detained for a short period of time, like the following: (a) José Edel García Díaz, journalist with the independent "Centro Norte del País" news agency and Jesús Díaz Loyola, journalist with the "Havana Press" agency; (b) Juan González Febles, Adela Soto, Fabio Prieto Llorente, Iván García Quintero and Héctor González; (c) Raúl Rivero, founder and Director of the independent "Cuba Press" agency; (d) Jesús Labrador Arias of "Cuba Press"; (e) María de los Ángeles González Amaro, Director of the "Unión de Periodistas y Escritores Cubanos Independientes" agency; (f) Santiago Martínez Trujillo, photographer with the "Unión de Periodistas y Escritores Cubanos Independientes" agency, Nancy Sotolongo León of the same agency and Angel Polanco of the "Cooperativa de Periodistas Independientes" agency; (g) José Antonio Fornariz Ramos, of the "Cuba Verdad" agency and Luis López Prendes of the independent "BPIC" news agency; (h) Pedro Argüelles Morán, correspondent with "Cuba Press"; (i) Hirán González, correspondent with "Cuba Press"; (j) Lázaro Rodríguez Torres, María del Carmen Carro Gómez and Jorge Olivera, Director of the "Havana Press" agency; (k) Odalys Ivette Curbelo Sánchez, a "Cuba Press" correspondent; (l) José Luis Rodríguez, a photographer with the "BPIC" agency; (m) Manuel Antonia González, a "Cuba Press" correspondent; (n) Oswaldo de Céspedes, a journalist with the "Cooperativa de Periodistas Independientes" agency and Omar Rodríguez Saludes of the "Nueva Prensa" agency; (o) Ofelia Nardo and Efrén Martínez Pulgarón of "Cuba Press", Marvin Hernández Monzón, Orlando Bordón Gálvez and Lázaro González of the same agency and Jesús Zuñiga, of the "Cooperativa de Periodistas Independientes" and Mario Viera González, Director of the "Cuba Verdad" agency; (p) Ulises Cabrera, Head of the independent "Pueblo Libre" news agency; (q) Jorge Luis Arce Cabrera, correspondent with the "BPIC" agency in Cienfuegos and Jesús Egozcue Castellanos, Director of the independent "Línea Sur Press" news agency; (r) Ricardo González, a "Cuba Press" journalist; (s) Juan Antonio Sánchez, a "Cuba Press" journalist.

100. In addition, the following journalists have reportedly been sentenced to longer prison terms: (a) Benardo Arévalo Padrón, founder of the independent "Linea Sur Press" news agency, in Aguadade Pasajeros, was allegedly sentenced to six years' imprisonment for insulting President Fidel Castro and Vice-President Carlos Lage; (b) Juan Carlos Recio Martinez, a "Cuba Press" correspondent, was allegedly sentenced to one year of community service on 13 February 1998 for acts against the security of the State; (c) Lorenzo Páez Núñez, a correspondent of the independent "BPIC" news agency in Artemisa, Havana, was allegedly sentenced to 18 months' imprisonment for insulting the national police. It is said that Mr. Páez was released on 4 January 1999 but arrested once again on 1 March 1999.

101. On 26 January 1999, the Special Rapporteur transmitted a joint urgent action with the Chairman of the Working Group on Arbitrary Detention concerning the arrest and detention of Jesús Joel Díaz Hernández, Executive Director of the independent press agency "Cooperative Avilena de Periodistas Independientes". Also considered as a government critic and human rights activist, Jesús Díaz was reportedly arrested on 18 January 1999 in Ciego de Avila province and sentenced to four years' imprisonment for "dangerous behaviour". According to the information received, Jesús Díaz's trial did not conform to international standards of fairness and his lawyer had inadequate time to prepare his defence.

Communications received

102. The Government of Cuba replied on 15 April 1999 concerning the case of Jesús Joel Díaz Hernández. The latter was sentenced on 20 January 1999 to four years' imprisonment for dangerous behaviour following five warnings in accordance with article 415 of Cuba's Penal Procedure Act. The Government of Cuba denies that the arrest and detention of Mr. Hernández is linked to his human rights interests and expresses its willingness to cooperate with the mechanisms of the Commission on Human Rights.

103. On 15 July 1999, the Government of Cuba sent a reply denying the request for further information on the allegation dated 19 March 1999 because the sources were unreliable. The Government of Cuba also questioned whether the objectivity that should characterize the work of the thematic mechanisms was being observed. The same communication also provided additional data on the Law for Protection of the National Independence and Economy of Cuba.

Observations

104. The Special Rapporteur thanks the Government of Cuba for its reply.

Democratic Republic of the Congo

Communications sent

105. On 7 October 1999 the Special Rapporteur transmitted to the Government a joint urgent action with the Special Rapporteur on the question of torture and the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo concerning Feu d'Or Bonsange, music editor, and Kala Bongamba, printer, both employees of the *L'Alarme* newspaper. They were allegedly arrested on 27 September 1999 and detained in the private

residence of a senior military officer before being transferred on 2 October to the building known as the "GLM" which, according to the information received, is an unofficial place of detention. Persons working for *L'Alarme* have allegedly been harassed by the authorities since 1997. The Special Rapporteurs also drew the Government's attention to the case of Clovis Kadda, publication director of the same newspaper, who was allegedly arrested on 22 September 1999 and interrogated in the military district of Kinshasa about one of the members of his family who, it was said, had participated in the rebellion. According to the information received, he was tortured and released the following day.

106. On 4 October 1999, the Special Rapporteur transmitted to the Government, jointly with the Special Rapporteur on the question of torture, a series of allegations concerning the following persons: Freddy Loseke Lisumbu-La-Yayenga, editor of *La Libre Afrique* newspaper, arrested on 22 December 1998, who allegedly received 150 lashes and was then interrogated about the publication of an article in his newspaper on that day; Christophe Bintu and Bienvenu Kasole, both of them human rights defenders, who were allegedly arrested on 12 January 1999 and released from the Kokolo camp on 20 January 1999 after being beaten and insulted in connection with their work as human rights activists; Jean-Baptiste Makoko, treasurer of the Groupe Lotus, a human rights NGO in Kisangani, who was allegedly arrested and beaten up on 10 December 1997 by three soldiers for having photographed dead soldiers in Kisangani hospital; Albert Bilbert Bosangi Yema, editor-in-chief of the *L'Arme* and *L'Essor Africain* newspapers, who was allegedly arrested on 7 February 1998, probably because of an article published in *L'Arme* criticizing the arrest of the Chairman of the "Forces novatrices pour l'union et la solidarité" political movement and who, according to the information received, is suffering from diabetes and rheumatism and whose health has deteriorated since his detention; Désiré Rugemanizi, Chief of Kabare, who was allegedly arrested in January 1998 for criticizing human rights violations in the region and tortured before being released in February 1998; Floribert Chebeya Bahizire, Chairman of the NGO "La Voix des sans-voix", who was allegedly beaten up at his home by armed men in uniform in March 1998; Oswald Hakorimana, a human rights defender in the Kivu du Nord region, who was allegedly beaten severely in March 1998 by soldiers who accused him of collecting information concerning massacres of civilians.

107. On 4 February 1998, the Special Rapporteur sent an urgent action to the Government concerning the situation of Moïse Musangana, Clément Kongo, Ngambata, Théodore Ngangu and Emmanuel Katshunga, publication director, deputy editorial director and journalist respectively. All were arrested on 3 February 1999 when elements of the National Intelligence Agency (ANR) allegedly surrounded the premises of the *Le Potentiel* newspaper. They were reportedly accused of having published decree-laws concerning political parties and regulations concerning demonstrations and public meetings. André Ipakala, editor of the *La Référence Plus* newspaper, was allegedly arrested on 4 February 1999, also by elements of the ANR, and taken to an unknown destination.

108. On 3 February 1999, the Special Rapporteur sent a joint urgent action to the Government together with the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo concerning the case of Michel Museme Diawe, editor-in-chief of Radio-Télévision Congolaise, who had allegedly been evicted from his home on 26 January 1999. According to the information received, he was harassed because of his professional activities.

109. On 25 January 1999, the Special Rapporteur transmitted a joint urgent action to the Government with the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo concerning the questioning of Kinyongo Saleh on 2 January 1999 about an article that was published in the *La Vision* newspaper. It is said that he was released the same evening. The cases of Thierry Kyalumba, publication director of *La Vision*, questioned by the same services, and of François Kadima Malungu, former special security adviser to President Kabila, were also transmitted.

Observations

110. The Special Rapporteur regrets that no reply has yet been received from the Democratic Republic of the Congo.

Djibouti

Communication sent

111. On 5 October 1999, the Special Rapporteur sent an urgent appeal to the Government of Djibouti concerning the arrest and detention of journalists Moussa Ahmed Idriss, Daher Ahmed Farah and Ali Meidal Wais. According to the information received Moussa Ahmed Idriss, editor of the monthly *Le Temps*, was arrested on 23 September 1999 in a police raid following the publication of an article stating that a military helicopter was destroyed as a result of guerrilla action. This was reportedly denied by the authorities who claimed it to be an accident. Ali Medidal Wais, senior editor of *Le Temps*, was arrested on 2 September 1999 and sentenced to eight months in jail for "dissemination of false new stories" and "damaging the armed forces' morale in an effort to harm national defence". Daher Ahmed, editor of the weekly *Le Renouveau*, was also sentenced to one year in prison for the same reason.

Observations

112. The Special Rapporteur has been informed that Moussa Idriss, Ali Medal Waiss and Daher Ahmed Farah were released on 8 December 1999. However, the two newspapers, which were suspended for six months, have still not resumed publishing.

Equatorial Guinea

Communication sent

113. On 15 November 1999, the Special Rapporteur sent an allegation to the Government of Equatorial Guinea concerning the refusal of government bodies to process applications that would have authorized the appearance of the following periodicals: *El Tiempo* (application of 11 July 1996), *La Opinión* (application of 22 April 1998), and *La Hoja del Periodista* (application of 6 March 1998). The Special Rapporteur was also informed that José Olo Obono, well-known criminal lawyer and secretary-general of one of the parties awaiting recognition, has been sentenced to five months in prison and a fine for "insulting the Government". It was alleged that Mr. Obono levelled strong criticism at the authorities during an interview he gave to the Spanish press in connection with the death of his former client, Martin Puye Topete.

According to the source, another serious incident occurred on 1 November 1998 when Alberto Mbe, Asunción Nsang Elo, María Luisa Abuy Eko and Benjamin Mba, members of the Convergencia para la Democracia Social party, were detained because they attempted to bring into Equatorial Guinea from Gabon 60 copies of a book published in Spain under the title Equatorial Guinea at the Crossroads. The Special Rapporteur also expressed concern over the absence of the regular publication of laws, decrees and governmental acts which jeopardizes the right of citizens to access information.

Observations

114. The Special Rapporteur is aware that, given the timing of this allegation, the Government's reply will appear in next year's report.

Iran (Islamic Republic of)

Communications sent

115. On 13 July 1999, the Special Rapporteur sent a joint urgent appeal with the Special Representative on the situation of human rights in the Islamic Republic of Iran concerning student demonstrators who were attacked on 8 July 1999 by members of the armed forces and the student vigilante group, Ansar-e Hezbollah, while they were gathering outside the university hostels on Tehran University's Amirabad campus to demonstrate against the closure of the daily newspaper *Salam*. Concern was expressed over the alleged deaths of four students, Na'imi, Sohrabian, Yavari and Zakeri, as well as over the arrest of and injury to students during this demonstration. On 6 July, student activists Mohamad Masud Salamati, Sayed Javad Emami and Parviz Safaria were reportedly detained after a demonstration outside the United Nations office in Tehran demanding the release of two journalists, Heshmatollah Tabarzadi and Hossein Kashani, who were arrested in mid-June.

116. On 12 July 1999, the Special Rapporteur sent a joint urgent action, with the Special Rapporteur on the question of torture and the Special Representative, concerning the cases of Heshmatollah Tabarzadi and Hossein Kashani, journalists of the weekly publication *Hovizat-U-Khich*, which has since reportedly been banned. The two journalists were allegedly arrested on 16 and 19 June 1999 for publishing information "contrary to the public order and the public interest" and "issuing an anti-establishment communiqué". On 6 July 1999, a number of students were reportedly protesting the detention of the above-mentioned individuals at the United Nations office in Tehran and were themselves arrested. Furthermore, it has been reported that the Government suspended the publication of a leading moderate newspaper, *Salam*, the same day the Majilis passed a new law which in principle restricts freedom of the press. *Salam's* editor, Morad Raisi Veissi, was reportedly detained on 7 July 1999.

117. On 15 December 1998, the Special Rapporteur transmitted a joint urgent appeal with the Special Representative and the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Government of Iran. They expressed concern about the disturbing news of what is described as a "pattern of murders and disappearances" of prominent Iranian writers and government critics. Majid Sharif, Mohammad Mokhtari and Mohammad Jafar Pooynade, all said to be writers, were allegedly found dead in suspicious circumstances after having

disappeared on 23 November, 3 and 9 December 1998 respectively. It is noted that these deaths followed the reported killings on 22 November 1998 of Dariush Forouhar and his wife, Parvaneh Forouhar, both prominent critics of the Government. Concern was expressed about the safety and physical integrity of Pirouz Davani, intellectual, critic and editor, who was reported missing since 25 August 1998, as well as that of all Iranian political and intellectual dissidents.

Communication received

118. The Government of the Islamic Republic of Iran replies to the Special Rapporteur in a communication dated 12 January 1999. It addressed the arrest of several staff of the Ministry of Information on charges of complicity in the killings of five Iranian citizens. The Government expressed its trust in the transparency and effectiveness of national mechanisms.

119. In its communication of 12 April 1999, the Government in reference to an allegation of 30 October 1998, stated that the publishing of *Rah-e-no* and *Tavana* had been suspended because of technical problems and a lack of funds.

Observations

120. The Special Rapporteur wishes to thank the Government of the Islamic Republic of Iran for its replies and for having kept him informed on the recent developments regarding the situation of the media in the Islamic Republic. The Special Rapporteur was informed by the source that Hossein Kashani, director of the newsletters *Hoveyet-e-Khish*, was released on bail in July 1999. Moreover, the Special Rapporteur learned that Heshmatollah Tabarzadi was released on bail on 5 November 1999.

Ireland

121. From 18 to 22 October 1999, the Special Rapporteur undertook a visit to Ireland, on which he has reported separately to the Commission at its present session. (E/CN.4/2000/63/Add.2).

Israel

Communication sent

122. On 22 September 1999, the Special Rapporteur sent a joint urgent action with the Chairman-Rapporteur of the Working Group on Arbitrary Detention concerning the arrest and detention of Ms. Cosette Elias Ibrahim, a journalist and student in the Faculty of Journalism in the Lebanese University of Beirut. According to the source, Ms. Elias Ibrahim was apprehended by Israeli soldiers, interrogated and then transferred to the detention centre at Al-Kiam. Two other individuals, Degaulle Boutros Bou Taleb and Samir George Khyame, also affiliated with the Lebanese media, were also allegedly detained and transferred to al-Khiam. According to the reports, Ms. Elias Ibrahim has been accused by the Government of Israel of writing reports about the occupied zone in southern Lebanon as well as of submitting information to the Lebanese armed forces about the movements of the Israeli army.

Communications received

123. The Government of Israel replied to the Special Rapporteur on 28 September 1999. Regarding the detention of Ms. Cosette Elias Ibrahim, Mr. Degaulle Boutros Bou Taleb and Mr. Samir George Khyame, the Government suggested that any requests for further information should be addressed directly to General Lahad, who is responsible for the El-Khiam detention centre. The Government further reported that Lebanese prisoners fall into two categories: those who have been apprehended in the course of terrorist attacks against the Israeli Defence Forces are held in Israeli detention centres, while those who have been apprehended in the course of attacks against the South Lebanon Army are held in El-Khiam detention centre.

124. The Special Rapporteur also acknowledges the communication sent on 14 July 1999 by the Government to draw his attention to the arbitrary arrest of Mr. Maher Dasuki in a town under the administration of the Palestinian Authority.

Observations

125. The Special Rapporteur thanks the Government of Israel for its prompt reply.

Japan

Communication received

126. The Government of Japan responded on 8 October 1999 to a joint allegation sent with the Special Rapporteur on the sale of children, child prostitution and child pornography on 13 July 1998 expressing concern over the extensive proliferation of Web pages, bulletin boards and news-servers disseminating images of child pornography over the Internet (see E/CN.4/1999/64, para. 82). The Government informed the Special Rapporteur that on 26 May 1999, a Law for Punishing Acts related to Child Prostitution and Child Pornography and for Protecting Children was enacted. It was due to enter into force on 1 November 1999. The Law provides that those who display child pornography on the Internet face imprisonment of up to three years. Measures to regulate the pornography industry operating through the Internet were introduced by an amendment to the Law on Control and Improvement of Amusement Business in October 1998. Moreover, the communication stated that when police investigators detect child pornography on the Internet, they ask the Internet providers to delete the material from the network. A trade organization of Internet providers has developed guidelines to curb illegal and harmful information, including child pornography, on the Internet. Under the guidelines providers can take measures such as warning, deleting the material and suspending the services to those that put illegal and harmful material on Web pages.

Jordan

Communications sent

127. On 25 October 1999, the Special Rapporteur sent an urgent appeal concerning the expulsion of Mr. Abdullah Hassanat (chief editor of the *Jordan Times*), Mr. Sultan Hattab (columnist at *Al Ra'i*), and Mr. Jihad al-Monati (journalist at *Al Dustour*) from the Jordan Press

Association (JPA). According to the source the expulsion was in response to a visit which the journalists made to Israel, at the invitation of the Haifa University Centre for Arab-Jewish Studies, in September 1999. As reported, membership in JPA is necessary to exercise the profession of journalism in Jordan.

128. On 11 August 1999, the Special Rapporteur transmitted an urgent action concerning Senan Shaqdeh, a senior editorial adviser for the evening daily newspaper *Al-Masaya* and a member of the Jordanian Journalists' Association. On 25 July 1999, he was reportedly arrested for publishing an article in *Al-Masaya* which, according to the authorities, was damaging to the Government's relations with a foreign Power.

Observations

129. The Special Rapporteur welcomes the release of Mr. Shaqdeh on 10 August 1999.

Kenya

Communication sent

130. On 23 September 1999, the Special Rapporteur sent a joint urgent action with the Chairman-Rapporteur of the Working Group on Arbitrary Detention concerning the detention and conviction of Mr. Tony Gachoka, publisher of the *Post on Sunday*, who was detained in connection with articles in his newspaper about alleged corruption in the judiciary. He was convicted of contempt of court, sentenced to six months' imprisonment and fined K Sh 1 million. The Special Rapporteur has been informed that three of the judges named in the newspaper articles for which Mr. Gachoka was being tried sat in judgement on his case.

Observations

131. The Special Rapporteur welcomes the release of Mr. Gachoka on 3 November 1999.

Kuwait

Communications sent

132. On 11 October 1999, the Special Rapporteur sent an urgent action to the Government of Kuwait concerning the arrest and detention of Mr. Ahmad Baghdadi, head of the Political Science Department at Kuwait University and a regular contributor to the daily newspaper *Al-siyassa*. Mr. Baghdadi was convicted on 4 October 1999 on charges of defaming Islam and the prophet Muhammad for an article he wrote in 1996 in the Kuwait University student magazine *Al-Shoula*. According to the information received, Mr. Baghdadi has been sentenced to one month in jail and is currently detained at Talha prison.

133. On 21 July 1999, the Special Rapporteur sent an urgent action concerning the continued detention of journalists Fawwaz Muhammad al Awadhi Bseiso and Ibtisam Berto Sulaiman al-Dakhil who, together with three colleagues from the newspaper *al-Nidaa*, were sentenced to death in June 1991 for having collaborated with occupying Iraqi forces. It has been reported

that 10 days later, the sentences were commuted to life imprisonment. However, the three colleagues of Mr. Bseiso and Mr. al-Dakhil, who were convicted of the same charges and subject to the same sentence, were released from jail on 25 February 1999 whereas the whereabouts of Mr. Bseiso and Mr. al-Dakhil remain unknown as well as their place of detention.

Communications received

134. The Government informed the Special Rapporteur, in its communication dated 19 November 1999, that Mr. Baghdadi was convicted to six months' imprisonment for defaming the Prophet Muhammad. The charges against him were brought under the Kuwait Public Code and not under the laws governing the media. As a result of an appeal on 4 October 1999, Mr. Baghdadi had his sentence reduced to one month. Following his hunger strike, he was taken after one day to the hospital and granted permission to receive visits from family members and the media. It is further noted that the court hearing his case respected all national and international standards and that Mr. Baghdadi was represented by three lawyers. On 18 October 1999, the Prince of Kuwait granted him a pardon, so that Mr. Baghdadi spent only 13 days in prison. The Government further stated that the Kuwaiti Constitution endorses fully the right to freedom of opinion and expression (art. 36) which is limited only by the necessity of public order.

135. The Government sent a communication on 30 July 1999 informing the Special Rapporteur that the Ministry of Information decided to ban the Al-Jazeera satellite and its correspondent from exercising their activities on charges of defaming the Amir. However, after the station's administration made an official apology and the presenter was dismissed, the Ministry lifted the ban and allowed the opening of a permanent office.

Observations

136. A response from the Government is still awaited.

Lebanon

Communication sent

137. On 4 November 1999, the Special Rapporteur sent an urgent appeal to the Government of Lebanon concerning the case of Marcel Khalifa, a well-known singer. According to the source, Mr. Khalifa was put on trial on 3 November 1999 for "insulting religious values" by including a two-line verse from a chapter of the Koran in his song "I am Yousef, o father" recorded in 1995. Allegedly, under article 473 of Lebanon's Penal Code blasphemy is punishable by one month to one year in prison, while article 474 of the Penal Code punishes "insulting publicly a religion" with imprisonment ranging from six months to three years.

Communication received

138. The Government informed the Special Rapporteur, in its communication dated 29 November 1999 with regard to the case of Mr. Marcel Khalifa, that the Lebanese

Constitution guarantees the right to freedom of opinion and expression. The Government further affirmed that Mr. Khalifa will get a fair trial and that he is still living in full freedom and giving his concerts according to schedule.

Observations

139. The Special Rapporteur wishes to thank the Government for its prompt reply.

Malaysia

Communications sent

140. On 14 September 1999, the Special Rapporteur sent an urgent action concerning the imprisonment of Murray Hiebert, a Canadian citizen and bureau chief of the weekly *Far Eastern Economic Review* in Kuala Lumpur. According to the information, Murray Hiebert was jailed on 11 September 1999 for six weeks after the Appeal Court upheld a 1997 conviction for "contempt of court". Mr. Hiebert was first sentenced to three months in jail in September 1997 for an article entitled, "See you in court", which appeared on 23 January 1997 about a suit brought by Chandra Sri Ram, the wife of Appeal Court Judge Gopal Sri Ram, against the International School of Kuala Lumpur. Upon his conviction and pending the appeal of the original sentence, the court reportedly seized Mr. Hiebert's passport and he has therefore been unable to leave Malaysia since that time.

141. On 18 June 1999, the Special Rapporteur sent a joint allegation with the Special Rapporteur on the right to education concerning the dismissal of Dr. Chandra Muzaffar, Professor and Director for Civilizational Dialogue of the University of Malaysia. Owing to the apparent absence of an academic rationale for Professor Muzzafar's dismissal, it is alleged that the dismissal is a politically motivated reprisal for his support for the opposition leader Ibrahim Anwar and the reform movement.

Communications received

142. In its communication of 4 October 1999, the Government of Malaysia replied that in the case of Mr. Murray Hiebert, the Malaysian judiciary had arrived independently at its judgement solely on the basis of the relevant laws.

143. The Government of Malaysia on 11 August 1999 informed the Special Rapporteur that Dr. Chandra Muzzaffar allegedly was dismissed from his position at the university not for political reasons but because his contract had ended.

Observations

144. The Special Rapporteur thanks the Government of Malaysia for its prompt replies and welcomes the release of Mr. Hiebert on 11 October 1999.

Mexico

Communications sent

145. The Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent three urgent actions in connection with the death threats received by persons working for the "Miguel Agustín Pro-Juárez" Human Rights Centre NGO on 6 September, 16 September and 1 November. Digna Ochoa Plácido said that she had been assaulted, questioned and harassed by a group of individuals who entered her home and questioned her until the morning of 29 October and, before leaving, allegedly tied her to a butane gas container.

146. On 6 October 1999, the Special Rapporteur also requested information concerning allegations of the violation of the human rights of the following persons:

(a) On 16 December 1998, the body of Philip True, a United States citizen and correspondent for the *San Antonio Express News*, was found in the Sierra Madre mountains. According to the information received, Mr. True had gone to Huicholes in order to write an article about the indigenous population of the region;

(b) During the same week, Armando Meléndez Sánchez, a journalist, was killed by three men who shot him in the presence of his wife;

(c) Luis Mario García Rodríguez, a reporter for the *La Tarde* newspaper, was killed on 12 February 1998 near a police station in Mexico City. According to the source, Mr. Rodríguez had written several articles about corruption in the Government Procurator's Department and the Federal Judicial Police;

(d) Héctor Félix Miranda, author of a column in which public and private corruption was regularly criticized, was killed in 1998;

(e) Jesús Blancornelas, editor of the *Zeta* weekly in Tijuana, was taken to hospital on 27 November 1997 following an attempt on his life. According to the source, there are indications that drug traffickers were behind the affair since Mr. Blancornelas often published articles about the Tijuana cartel;

(f) Gabriel Gaza, a crime reporter with the *El Diario* newspaper in Nuevo Laredo, was beaten up in the street on 7 October 1997 by about 12 police officers, including Inspector Juan Antonio Treviño. It was reported that the police subsequently apologized for what had happened, explaining that it was an error since they had confused Mr. Gaza with a criminal;

(g) The photographer Raúl Urbina was assaulted by security officers when he was covering a demonstration in Mexico City on 3 September 1997.

(h) Daniel Lizarraga, of the *La Reforma* newspaper, was abducted on 5 September 1997 by two men who are thought to have been members of the Federal Judicial Police. According to the information received, Mr. Lizarraga was investigating an alleged connection between officials of the Government Procurator's Office and cocaine traffickers;

(i) Fátima Monterroso, of the "Detrás de la Noticia" programme, and Daniel Pensamiento, of the *La Reforma y El Norte* newspaper, correspondents in Chiapas, were assaulted on 26 August 1997;

(j) Rafael Jiménez y Leobardo Espinoza, reporters for *El Debate*, as well as Georgina Gill of the Televisa television company and Manuel Salas and Moisés Juarez, of *Noroeste*, were assaulted and threatened in Culiacán on 31 July 1997. It is alleged that these attacks were the work of the State Judicial Police of Sinaloa;

(k) Nidia Marín, of the *Excelsior* newspaper, Miguel Pérez of the *La Reforma* newspaper and Juan García, a photographer with the *Excelsior* were, according to the information received, assaulted by State guards on 4 June 1997 when they were covering an inauguration ceremony;

(l) Salvador Chávez, a correspondent for the Televisa television company, was arrested on 12 April 1997. According to the information received, he was detained for two hours and beaten by the police when covering a police operation in Guadalajara in the State of Jalisco;

(m) Cuauhtémoc Ornelas Campos, editor of the *Alcance* review, has officially been declared as having disappeared since 4 October 1995. According to the information received, he condemned the activities of drug traffickers in the region of the State of Coahuila and their connection with the authorities.

147. On 16 July 1999, the Special Rapporteur sent a joint urgent action with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the death threats received on various occasions by Jesús Barraza Zavala, director of the *Pulso* weekly and the aggression against his bodyguard by alleged official agents. On 9 April 1999, *Pulso* published two articles connecting Albino Quintero Meraz, an ex-governor, and the Federal Judicial Police with drugs trafficking and calling for an investigation. As a result, on 4 May 1999, Mr. Quintero's emissary allegedly threatened Mr. Barraza with death, stating that his body would be found floating in a river if he did not cease publishing his accusations. According to the information received, the emissary offered Mr. Barraza the sum of $30,000 in exchange for his silence.

148. We have been informed that Benjamín Flores González, the former director of *Pulso*, was killed by drugs traffickers on 15 July 1997 and that the police has so far not arrested the authors of this crime.

149. On 26 April, both Special Rapporteurs sent an urgent action to the Government referring to the threats received by the staff of the *La Guillotina* review. It is alleged that on 8 April 1999 a man attacked Carina Ochoa, a journalist with this review.

150. On 15 February, the Special Rapporteur sent a joint urgent action together with the Special Rapporteur on extrajudicial, summary or arbitrary executions informing the Government of Mexico about the attack and the death threats received by Enrique Gutiérrez, a correspondent for the *El Sur* local newspaper while he was covering the elections of 7 February in Acapulco, State of Guerrero. The incident took place in La Glorieta de Puerto Marqués, when the journalist was gathering information on alleged irregularities in the electoral process committed by election officers from Polling Station 308 and staff working for the municipal government, who were members of the Institutional Revolutionary Party (PRI).

Communications received

151. The Special Rapporteur received a communication dated 13 February 1998 in which the Government of Mexico clarified the legal position in respect of some of the cases on which information had been requested. In its communication the Government provided information about the case of Rene Solorio, Ernesto Madrid and Gerardo Segura, as well as the cases of Daniel Lizárraga, David Vicenteno, Abdel Jesús Bueno León, Benjamín Flores González and Victor Hernández Martines. According to the information received, these cases are still under investigation and some have reached the trial stage. The Special Rapporteur will ask to be kept informed about the progress made in these proceedings.

152. The Mexican Government, in a communication dated 10 August 1999, provided the Special Rapporteur with information about the case of Jesús Barraza, stating that proceedings had been instituted and that the Federal Government had requested the Government Procurator of the State of Sonora to take measures to protect the journalist. It also stated that the Government Procurator was authorized to do everything in his power to prevent any direct or indirect action being taken against Mr. Barraza and to guarantee his integrity. The Government also transmitted additional information about the case of Jesús Barraza, indicating that, since 31 June 1999, elements of the municipal police in San Luis Río Colorado, Sonora, had been assigned to protect Mr. Barraza. Similarly, the deputy investigator of the Government Procurator's Department (ordinary jurisdiction) based in that town had ordered elements of the judicial police to carry out regular checks at various hours of the day and night, including contact with the staff of the *Pulso* weekly and Mr. Barraza's home.

153. The Mexican Government also sent a report dated 22 September 1999 indicating that the National Human Rights Commission (CNDH) had transmitted the file concerning the Human Rights Centre "Miguel Agustín Pro-Juárez" to the inspectorate responsible for coordinating the programme of assistance for journalists and human rights defenders, in accordance with article 40 of the CNDH Law which states that the Inspector-General may request the competent authorities to take preventive measures to avoid an irreparable outcome when such acts are reported. It added that preventive measures had been taken and that preliminary investigations had been launched.

154. In a letter dated 1 December 1999, the Special Rapporteur received a reply to the allegations submitted on a number of cases, providing information on each one. The progress made in the investigations varies from case to case. The report indicated that those responsible for the killing of the journalists Phillip True and Benjamín Flores Gonzáles had been identified and sentenced. However, it also stated, in respect of the killing of the journalist Luis García

Rodríguez and in the cases of the assault and battery of the journalists David Vicenteño and Salvador Chávez Calderón, that CNDH had ended its investigations since it had "found no evidence of the participation by any authority or public official". Similarly, it indicated that CNDH had closed the cases of Rene Solorio, Gerardo Segura and Ernesto Madrid because they had requested that the investigations should be discontinued. The case of the aggression committed against the journalist Raúl Urbina was also closed since the Public Security Secretariat of the Federal District had taken steps to determine who was responsible, so that it is unknown whether all the guilty parties have been identified and sentenced.

155. The information also indicated that, in the cases of the killing of the journalists Héctor Félix Miranda and Abdel Bueno León, as well as the attempt against the life of Jesús Blancornerlas, investigations had not yet been completed or that CNDH's recommendations had not been complied with fully.

Observations

156. The Special Rapporteur thanks the Mexican Government for the information received. However, he notes with concern that most of the journalists attacked were those who spoke out about a connection between drugs traffickers and officials and condemned the abuse of power by State agents.

Myanmar

Communication sent

157. On 15 November 1999, the Special Rapporteur sent an allegation concerning restrictions on freedom of opinion and expression imposed by the Government which officially censors domestic public media. The Special Rapporteur also requested further information regarding the following individual cases. Saung Win Latt, a famous short story writer, has been detained since early 1997 and is serving a seven-year jail term for "violating the press" by making a joke about the junta during a literary talk. U Hla Pe, a member of the Central Executive Committee of the opposition National League for Democracy (NLD), and U Zeya, chairman of the Myaungmya township NLD Organizing Committee, were among others allegedly harassed on 26 January 1997 by the police. According to the information received , numerous NLD MPs , among them U Aung Tin from Shadaw and U Boe Thin from Loikaw, were forced to resign on 13 January 1997. U Moe Thu, a writer and journalist who worked closely with Aung San Suu Kyi, has reportedly been detained since May 1996. Allegedly, U Win Tin, former editor of *Hanthawaddy*, had his sentence extended on 28 March 1996 to five years since he reportedly sent letters describing prison conditions at Insein to the former Special Rapporteur on the situation of human rights in Myanmar, Professor Yozo Yokota. U Myo Mynt Nyen and U Sein Hlaing were arrested in September 1990 and sentenced to seven years in jail for publishing anti-Government propaganda. Allegedly, in March 1996 they were sentenced to another seven years for sending letters to the Special Rapporteur regarding the harsh conditions in prison.

158. On 28 July 1999, the Special Rapporteur sent a joint urgent action with the Special Rapporteur on the question of torture to the Government of Myanmar concerning the cases of Thaint Wunna Kin, Ma Khin Leh, U Aye Swe, Daw Tin Tin, Kyaw Kyaw Oo, U Zaw Myint,

Daw Tint Tint, Ko Zaw Zaw Latt, U Ba Chit, U Ye Tint, U Win Myint, Dr. Shwe Bo, Ma Thida Htway, Ko Lwin Moe Myint, Ko Myint Oo, Ko Ah Thay Lay, Ko Hla Win and two unnamed female physicians who were reportedly arrested between 19 and 23 July 1999 in Pegu, central Myanmar. Most of these individuals were allegedly arrested owing to their involvement in a march commemorating the fifty-second anniversary of the assassination of General Aung San. Military intelligence reportedly looked for Kyaw Wunna, one of the activists who was organizing the march, and, not finding him, arrested his 3-year-old daughter and his wife. Six other members of Kyaw Wunna's family were also allegedly arrested on 23 July 1999. The remaining 11 people, who were reportedly distributing pamphlets, were arrested between 19 and 24 July 1999.

Communication received

159. The Government of Myanmar informed the Special Rapporteur on 11 August 1999 that allegations that some individuals, including a 3-year-old, have been arrested and detained in Bago are found to be untrue. However, some people have been investigated in connection with the discovery of pamphlets printed by the armed terrorist group, the All Burma Students' Democratic Front.

Observations

160. The Special Rapporteur thanks the Government for the reply received on 11 August 1999 and wishes to inform the Government that given the timing of the last communication, sent on 15 November 1999, the Government's reply will be included in next year's report.

Nigeria

Communications sent

161. On 25 October 1999, the Special Rapporteur sent an urgent action together with the Chairman-Rapporteur of the Working Group on Arbitrary Detention concerning the arrest and detention of Mr. Jerry Needam, a journalist of the newspaper *Ogoni Star*, and a human rights activist, in connection with the attempt of the Movement for the Survival of the Ogoni People, (MOSOP), to express public concern over police conduct which would constitute an abuse of human rights.

162. On 5 May 1999, the Special Rapporteur sent a joint urgent action together with the Chairman-Rapporteur of the Working Group on Arbitrary Detention concerning the arrest on 25 April 1999 of Mr. Lanre Arogundade, Chairman of the Council of the Lagos Branch of the Nigerian Union of Journalists (NUJ). According to the source, Mr. Arogundade was first arrested and detained in February 1999 at a time when he had been receiving death threats as a result of his NUJ activities. It is alleged that he was arrested on the basis of petitions filed against him by a faction of the Union, in connection with his alleged involvement in the murder of former NUJ treasurer Bolade Fasasi. It is further reported that his detention coincides with planned activities for the celebration of World Press Freedom Day in Nigeria.

Observations

163. The Special Rapporteur welcomes the release on bail of Mr. Needam on 2 November 1999 but regrets that no reply has been received from the Government on the case.

Pakistan

Communications sent

164. On 24 May 1999, the Special Rapporteur sent a joint urgent action with the Special Rapporteur on violence against women concerning a press statement issued on 14 May 1999 by the Social Welfare Minister of Punjab, Mr. Pir Bin Yamin Rizvi, in which he accused the Human Rights Commission of Pakistan, the women's organization Shirkat Gah and the Ajoka theatre group of spreading vulgarity and obscenity in the name of human rights and of anti-State activity. The allegation of anti-State activities reportedly emanates from the participation of a Shirkat Gah representative in a British Council seminar on violence against women held in England.

165. On 12 May 1999, the Special Rapporteur sent an urgent action concerning Mr. Najam Sethi, founder and editor of the English-language weekly newspaper *Friday Times*, who was arrested on 8 May 1999 by the Pakistan Intelligence Bureau, in cooperation with the Punjab police. The reasons for Mr. Sethi's arrest are assumed to be related to declarations he made in the BBC television documentary "Correspondant" concerning the alleged high level of corruption in the Government of Pakistan.

Observations

166. The Special Rapporteur welcomes the release of Mr. Sethi but still awaits a reply from the Government of Pakistan on the cases in question.

Peru

Communications sent

167. On 11 October 1999, the Special Rapporteur sent a joint urgent action with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning death threats to Juan Sausa Seclen, correspondent for the daily *La República*. According to information received, the anonymous caller threatened Mr. Seclen, who is now in hiding, that if he did not stop criticizing the National Intelligence Service he and his family would disappear. Allegedly, Mr. Seclen had published an article regarding the current activities of Hugo Coral Goychocea, a former member of a paramilitary group and now a bodyguard of Walter Pietro Maitre, mayor of the city of Jaem. Moreover, according to the source, the 28 September edition of *La República* was seized in order to prevent the information from being made public.

Observations

168. The Special Rapporteur thanks the Government of Peru for the communication dated 16 June 1999 in which a list of people benefiting from an amnesty law was provided. However, replies to the communications sent are still awaited.

Republic of Korea

Communication sent

169. On 2 July 1999, the Special Rapporteur transmitted an urgent action to the Government concerning Suh Jun Sik, a prominent human rights activist, coordinator of the Sarangbang Centre for Human Rights based in Seoul. According to the information received, Suh Jun Sik, a former political prisoner who had already been imprisoned for 17 years, was arrested on 4 November 1997 by the Seoul Administration Security Division for having shown the film "Red Hunt" during the 1997 Seoul Human Rights Film Festival, which was sponsored and organized by the Sarangbang Centre.

Communication received

170. The Government replied on 8 January 1999 to a communication sent by the Special Rapporteur on 22 July 1999 (see E/CN.4/1999/64, para. 98). According to the Government, Ham Yun Shik was sentenced on 2 July 1999 to one year's imprisonment by the Seoul District Court. A complaint against Ham Yun Shik was lodged by the National Congress for New Politics for defaming the then presidential candidate Kim Dae Jung. In the same communication, it is stated that Song Chung Mu was sentenced to two years' imprisonment on 23 September 1998 for having libelled Kim Dae Jung during electoral campaigns. The Government also explained how its legislation sets reasonable limits on the exercise of free speech to ensure just and fair elections.

171. On 16 July 1999, the Government sent a reply regarding the case of Mr. Suh Jun Sik whose trial was not yet concluded owing to the presentation of further evidence.

Observations

172. The Special Rapporteur thanks the Government for its prompt reply.

Sudan

173. From 20 to 26 September 1999, the Special Rapporteur undertook a visit to Sudan, on which he has reported separately to the Commission at its present session (E/CN.4/2000/63/Add.1).

Syrian Arab Republic

Communications sent

174. On 26 April 1999, the Special Rapporteur sent a joint urgent action together with the Special Rapporteur on the question of torture concerning Nizar Nayouf, editor-in-chief of the monthly journal *Sawt al-Democratiyya* and Secretary-General of the Committee for the Defence of Democratic Freedoms in Syria, who was reportedly arrested in January 1992. On 17 March 1992, a military court sentenced him to 10 years of forced labour for being a member of an unauthorized organization and for disseminating false information. For over a year, Mr. Nayouf has reportedly been suffering from Hodgkin's disease. Prison authorities have allegedly refused to give him medical treatment unless he pledges to refrain from political activity and signs a statement acknowledging that he made false declarations concerning the situation of human rights in Syria. It has also been brought to the Special Rapporteur's attention that he is being held in a solitary cell measuring 2.5 by 3 metres in the military prison of Mezze in Damascus, and has not seen the sun for seven years.

175. On 26 April 1999, the Special Rapporteur transmitted a joint urgent action with the Special Rapporteur on the question of torture and the Chairman-Rapporteur of the Working Group on Arbitrary Detention concerning the case of Farj Bayraqdar, a Syrian journalist and poet who was reportedly arrested in March 1987 and held incommunicado for nearly seven years before he was brought before a State Security Court in 1993. Allegedly accused of belonging to the unauthorized "Hizb Al-Amal Al-Shuyu'i" (Party of Communist Action), he was sentenced to 15 years of imprisonment on 17 October 1993. Currently held in Seydanaya prison, Mr. Bayraqdar is reportedly being denied medical treatment for serious injuries he sustained as a result of alleged torture.

Communications received

176. On 7 June 1999 the Government of the Syrian Arab Republic informed the Special Rapporteur that Mr. Nizar Nayyouf had been arrested for participating with other Syrian citizens in establishing a group that carried out activities against State security. On the same date, the Government reported that Mr. Faraj ibn Ahmad Bayraqdar had been arrested on 31 March 1987 because of terrorist activities for which he received a 15-year prison sentence.

Observations

177. The Special Rapporteur thanks the Government of the Syrian Arab Republic for its replies. However, he is still concerned for the health of Mr. Nayyouf given the repeated reports that he should receive adequate medical treatment.

Togo

Communications sent

178. On 11 May 1999, the Special Rapporteur sent a joint urgent action with the Special Rapporteur on the question of torture concerning Tengue Nestor and Gayibor François, executive

members of the Togolese Association for the Defence and Promotion of Human Rights (ATDPDH), both of whom were arrested on 3 May 1999 by the police at Lomé. It is alleged that Sant'Anna Brice, considered to have worked closely with this organization, was also arrested. According to the sources, all three are accused of "damage to the credit and safety of the State, dissemination of false information, forgery and use of forgery" for having transmitted to international human rights organizations erroneous information on human rights violations committed by the Togolese Government.

179. On 25 May 1999, the Special Rapporteur sent a joint urgent action with the Special Rapporteur on the question of torture concerning Nadjombe Antoine Koffi, a member of the NGO Amnesty International who had allegedly been arrested on 14 May 1999 at Lomé a few days following Amnesty International's publication of a report on human rights violations in Togo during the 1998 elections. As in the case of the three persons mentioned in the urgent appeal of 11 May 1999, fears were expressed that Nadjombe Antoine Koffi might be tortured.

Communications received

180. The Togolese Government transmitted a reply to the Special Rapporteur on 27 July 1999 informing him that an investigation launched into the activities of ATDPDH had revealed that some of its members, including Tengue Apedo Mensa, Sant'Anna Brice and Gayobor Koko Koété intended to reveal to Amnesty International a number of serious incidents, attributing them to the forces of law and order. On 7 May 1999, after a long period in police custody ordered by the Government Procurator, they were referred to the Government Procurator's Office of Lomé. They were charged with complicity in damage to a person's honour, the dissemination of false information and incitation to rebellion. After being charged, a detention warrant was issued on 7 and 14 May 1999. The accused were released on 18 June 1999 at the order of the Government Procurator and proceedings are under way. Lastly, the Government assured the Rapporteurs that Togo, in accordance with its international undertakings, had made significant progress in ensuring respect for human rights, particularly in the legal field, giving as an example the fact that the National Human Rights Commission had closely followed developments in this case.

Observations

181. The Special Rapporteur thanks the Government for its reply.

Tunisia

182. From 6 to 10 December 1999, the Special Rapporteur undertook a visit toTunisia, on which he has reported separately to the Commission at its present session (E/CN.4/2000/63/Add.4)

Turkey

Communications sent

183. On 7 October 1999, the Special Rapporteur sent to the Government allegations concerning the following cases: Yalcin Kucuk, a journalist of Hepileri, who has been jailed since 29 October 1998 and is currently detained at Gezbe prison; Nadire Mater, a reporter for Inter Press Service, who was charged under article 159 of the Penal Code "for insulting and belittling the military" in her book *Mehmed's Book: Soldiers who have fought in the south-east speak out* and who, if convicted, faces a prison sentence of one to six years; Nuredin Sirin, an editorialist of *Selam* who was sentenced on 18 December 1998 for an article he published on 15 July 1997; the Kurdish "MED-TV" satellite channel, which had its broadcasting licence withdrawn on 23 April 1999. The Special Rapporteur, however, welcomed the enactment of the Amnesty Law which brought the release of 21 journalists.

184. On 1 June 1999, the Special Rapporteur sent an urgent action concerning Muzzafer Ilhan Erdost, a prominent writer, journalist and publisher who has been sentenced to one year in prison and a fine of 100 million lira on charges relating to his book *Three Sivas*. Mr. Erdost also undertook independent human rights studies and participated in the establishment of the Turkish Human Rights Association (IHD). It was reported that he was first imprisoned from 1971 to 1974 because of his writings and in 1980 he was arrested for the second time, together with his brother, after the military coup d'état of 12 September.

185. On 5 January 1999, the Special Rapporteur transmitted an urgent action concerning Mr. Akin Birdal, Chairman of IHD and Vice-Chairman of the Human Rights Foundation of Turkey, who was sentenced on 16 December 1998 to a one-year term of imprisonment for a speech he made on 1 September 1995. In his speech, he allegedly called on the Turkish authorities to negotiate a peaceful end to the conflict in the south-east. According to the source, Mr. Birdal could be arrested at any moment to serve a previous one-year sentence which was confirmed on 27 October 1998. Moreover, three branches of IHD based in Bursa, Mardin and Balikesir were closed down on 13 November, 16 and 17 December 1998 respectively because they had on the premises prohibited human rights publications. It is further reported that the Director of the Balikesir branch of IHD, Dr. Bekir Ceylan, was dismissed from his government post allegedly because he was an executive member of IHD.

Communications received

186. The Government of Turkey transmitted an explanatory note on 30 September 1999 regarding the 21 journalists amnestied under Law 4454.

187. In its communication dated 25 May 1999, the Government informed the Special Rapporteur about the temporary closure of the IHD branches in Balikesir, Mardin and Bursa. According to the Government, the Balikesir branch continues its activities, while the Mardin branch was closed for a period of three months from 16 December 1998. The branch office in Bursa was closed for a period of three months and then its activities were banned after the Government established that the office was functioning in contravention of the Law on Associations. The Government also informed the Special Rapporteur that Mr. Bekir Ceylan,

Director of the Balikesir branch office, was dismissed from his government post in the State Hospital as a result of his participation in the preparation of a false document. With regard to the case of Mr. Akin Birdal, it stated that his one-year sentence for "inciting the public to hatred and discrimination based on race, religion or ethnic origin" was confirmed in October 1998 and was implemented on 3 June 1999.

188. The Government in its communication dated 30 June 1999 provided information pertaining to the case of Mr. Muzaffer Ilhan Erdost who on 20 July 1999 was sentenced to one year's imprisonment on the charge of spreading separatist propaganda against the integrity of the State and to a fine of 100 million lira. According to the Government, the case had been taken to the Court of Appeals.

Observations

189. The Special Rapporteur thanks the Government of Turkey for its replies and his willingness to cooperate with the mandate.

Turkmenistan

Communication sent

190. On 19 February 1999, the Special Rapporteur sent an allegation requesting further details about the legal basis of the charges against and conviction of Mr. Vyacheslav Mamedov, an activist of the Russian community of Turkmenistan. According to the information received, Mr. Mamedov was arrested on 21 January 1999 for "slander", after a series of prior actions against him beginning on 8 December 1998, on the basis of an interview he had given on the Russian radio station "Mayak" on 18 December 1998 in which he had described his community work. According to the sources, Mr. Mamedov was freed a few days after his arrest, but the charges against him are still pending.

Communication received

191. The Government of Turkmenistan replied on 9 April 1999 concerning the case of Mr. Mamedov, who was granted a pardon by the President of Turkmenistan.

Observations

192. The Special Rapporteur thanks the Government for its reply.

United Kingdom of Great Britain and Northern Ireland

193. From 24 to 28 October 1999, the Special Rapporteur undertook a visit to the United Kingdom of Great Britain and Northern Ireland, on which he has reported separately to the Commission at its present session (E/CN 4/2000/63/Add.3).

Yemen

Communication sent

194. On 19 May 1999, the Special Rapporteur sent an urgent action concerning Abdel Latif Kutubi Omar, Hisham Basharah'il and Ali-Haitham al-Gharib. According to the source, Abdel Latif Kutubi Omar, editor in chief of the opposition weekly *Al-Haq*, was arrested on 2 March 1999 in his Sanaa office by five armed plainclothes agents and was taken to the Criminal Investigation Department for interrogation. It has been reported that his arrest is linked to an article published in *Al-Haq* on 28 February 1999 in which he mentioned an agreement between the United States and the Yemeni authorities regarding military facilities offered to the United States on the island of Socotra. Mr. Omar was released on 6 March after three days in custody and was allegedly informed that he would be prosecuted and should appear in court on 19 May. Hisham Basharah'il, editor in chief of the newspaper *Al-Ayyam*, and Ali-Haitham al-Gharib, a writer for the paper, were reportedly arrested on 2 and 4 March 1999 respectively and charged with instigating "national feuds", "the spirit of separatism", and harming "national unity". The charge allegedly stems from an article published on 27 February 1999 which criticized factionalism in Yemeni society and the structure of local government.

Communication received

195. On 8 August 1999 the Yemeni Government transmitted, through the Supreme National Human Rights Commission, a reply to the Special Rapporteur giving further details about the charges against the persons in question. It stated that the publication of the article by Hisham Basharah'il and Ali-Haitham al-Gharib was likely to exacerbate confessionalism and regionalism, create divisions in Yemeni society and propagate ideas likely to cause a breach of State security. According to the Government's communication, Hisham Basharah'il published a summary of the proceedings of a trial on 2 March 1999 despite the fact that such action had been prohibited by the court which had considered that the press might influence court procedure. On the subject of Mr. Abdel Latif Kutubi Omar, it stated that he had been referred to the competent court in connection with a number of affairs, the last of which involved the publication of an article entitled "Yemen provides the United States and Socotra with military facilities". That article was considered likely to exacerbate confessionalism and tribalism and create divisions in Yemeni society.

Observations

196. The Special Rapporteur thanks the Yemeni Government for its reply and hopes that he will be kept informed of developments in these three cases.

Zambia

Communication sent

197. On 12 March 1999, the Special Rapporteur sent a joint urgent action with the Special Rapporteur on the question of torture concerning Amos Malupenga, Goodson Machona, Brighton Phiri, Joe Kaunda, Kelvin Shimo and Lubasi Katundu, all journalists with the

independent *Post* newspaper, who were reportedly arrested on 9 and 10 March 1999. All the journalists are believed to have been arrested in connection with an article on the low military capabilities and unprepared state of the Zambian army in the face of a possible threat from Angola.

Observations

198. A response from the Government is still awaited.

Zimbabwe

Communication sent

199. On 6 October 1999, the Special Rapporteur sent a joint allegation with the Special Rapporteur on the question of torture regarding the cases of Mark Chavudunka, editor of the independent Sunday newspaper *The Standard*, and Ray Choto, chief reporter for the same newspaper. Mark Chavudunka was arrested on 12 January 1999 by the military police in Harare and allegedly detained incommunicado for six days. According to the source he was accused of having published an article on 10 January 1999 with regard to the arrest of 23 military officers for plotting a coup in December 1998. Ray Choto was reportedly arrested on 19 January 1999 by the police. Both journalists have reportedly sustained serious injuries as a result of torture during their detention at the military police station. Despite the fact that both journalists were released on bail on 21 January 1999, they are still facing charges under the Law and Order Maintenance Act for "publishing false reports".

Observations

200. The Special Rapporteur regrets that no reply has yet been received from the Government on the case in question.

Palestine

Communication sent

201. On 12 October 1999, the Special Rapporteur sent a joint urgent action with the Chairman-Rapporteur of the Working Group on Arbitrary Detention concerning the detention of Mr. Maer al-Dessouki, a journalist with the independent Al'Quds educational television station. According to the source , Mr. al-Dessouki was arrested on 15 September 1999 by Palestinian Security Services agents and was reportedly accused of "possessing material inciting against the Palestinian National Authority". According to reports, his arrest was related to his having hosted a programme on 12 September 1999 in which Palestinians whose family members had not been included in the previous week's prisoner release by Israel criticized the Palestinian Authority.

Observations

202. The Special Rapporteur regrets that no reply has been provided by the Palestinian Authority and hopes to receive one soon.

V. CONCLUSIONS AND RECOMMENDATIONS

203. While the Special Rapporteur notes with satisfaction a growing tide in favour of human rights and that almost all Governments seem to be upholding the sanctity of the principles of freedom of opinion and expression, he at the same time finds innumerable cases of great violations of human rights.

204. The Special Rapporteur cannot help but view with dismay the contents of the communications received in the past year. It is clear from them that the rights to freedom of opinion, expression and information are violated, almost as a matter of routine, in States with widely different political systems and institutional frameworks for governance. There are countries where these rights do not enjoy even the minimum protections and guarantees set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and associated international human rights instruments. In this regard, the Special Rapporteur encourages all States that have not ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to do so. Furthermore, he again urges all Governments to scrutinize their domestic legal systems with a view to bringing them into line with international standards governing the right to freedom of opinion and expression. Particularly with regard to the issue of national security, the Special Rapporteur urges all Governments to review not only laws specifically intended to protect national security but also ordinary criminal laws which may be used to infringe the rights to freedom of opinion and expression and to information. The criminal justice and the police systems also need to be overhauled to ensure greater justice and fairness from the police. The Governments may also consider the feasibility of setting up national human rights commissions and positions of ombudsman where these institutions do not exist.

205. In this regard, the Special Rapporteur strongly urges all Governments to ensure that press offences are no longer punishable by terms of imprisonment, except in cases involving racist or discriminatory comments or calls to violence. In the case of offences such as "libelling", "insulting" or "defaming" the head of State and publishing or broadcasting "false" or "alarmist" information, prison terms are both reprehensible and out of proportion to the harm suffered by the victim. In all such cases, imprisonment as punishment for the peaceful expression of an opinion constitutes a serious violation of human rights.

206. As regards information, particularly information held by Governments, the Special Rapporteur strongly encourages States to take all necessary steps to ensure the full realization of the right to access to information. The Special Rapporteur proposes to undertake a comparative study of the different approaches taken in the various regions and countries in this regard. He also commends to the Commission on Human Rights the Principles on Freedom of Information Legislation that were developed by Article 19 (see annex II); he further requests the Commission to endorse these principles in the resolution it will adopt at its fifty-sixth session.

207. As regards the impact of new information technology on the right to freedom of opinion and expression, the Special Rapporteur considers it of pre-eminent importance that they be considered in the light of the same international standards as other means of communication and that no measures be taken which would unduly restrict freedom of expression and information; in case of doubt, the decision should be in favour of free expression and the free flow of

information. With regard to the Internet, the Special Rapporteur wishes to reiterate that on-line expression should be guided by international standards and be guaranteed the same protection as is awarded to other forms of expression.

208. In this context, he also recommends that all reasonable steps be taken to promote access to the Internet. For instance, Governments should promote an economic and regulatory environment which encourages the extension of telecommunication lines to rural and other previously under-serviced areas. Wherever possible, government information should be made available through the Internet.

209. Concerning the link between the right to freedom of opinion and expression and the rights of women, the Special Rapporteur expresses his great concern at the continuing silencing of women by various devices. Discriminatory rules and conventions continue to bolster entrenched patriarchal attitudes. In stark manifestation of male chauvinism, women are harassed. But it is at the same time encouraging to note that a spirit of change is building up with women's movements appearing even in highly conservative and religious societies. Education continues to improve. Women's participation in the workforce has increased. Women's actions to improve their political influence are gathering momentum. Efforts are being made to win adequate representation in Government at the national and local levels. Claims are being made to senior government posts. The Special Rapporteur urges Governments to take all necessary steps to remove formal and cultural obstacles to the exercise by women of their right to freedom of expression, including the right to receive information, and ultimately to give effect to all their rights. In light of the importance of freedom of expression and its relationship to the struggle against violence against women, the Special Rapporteur is of the view that a special effort should be made to gather and analyse more information along the lines described in the present report. The Special Rapporteur would like to reiterate his hope to be able to prepare a report jointly with the Special Rapporteur on violence against women, to be submitted to the Commission on Human Rights next year. In this regard, he invites submissions by Governments, intergovernmental organizations and specialized agencies, as well as non-governmental bodies.

210. In regard to the continuing pattern of violations of the right to freedom of opinion and expression of human rights defenders, the Special Rapporteur recommends to Governments to take steps to implement the provisions of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

Annex I

INTERNATIONAL MECHANISMS FOR PROMOTING FREEDOM OF EXPRESSION

The United Nations Special Rapporteur on freedom of opinion and expression, the Representative on freedom of the media of the Organization for Security and Cooperation in Europe (OSCE) and the Special Rapporteur on freedom of expression of the Organization of American States (OAS) met for the first time in London on 26 November 1999 under the auspices of Article 19.

- We recall that freedom of expression is a fundamental international human right and a basic component of a civil society based on democratic principles;

- Independent and pluralistic media are essential to a free and open society and accountable government. Respect for freedom of the media in the States members of our organizations, although very different from country to country, leaves much to be desired;

- Certain Governments have continued to exert and allow impermissible pressure on the media in their respective countries. The levels of harassment might be different but the general aim is the same: to suppress pluralism and open debate on issues of concern to citizens;

- Freedom of expression is not only a fundamental human right in and of itself, but it has ramifications for economic development as well. The media has a "corrective" function by bringing to the public's attention corruption and inequitable practices. The absence of free media can lead to economic stagnation and improper practices by both Governments and businesses;

- Implicit in freedom of expression is the public's right to open access to information and to know what Governments are doing on their behalf, without which truth would languish and people's participation in Government would remain fragmented;

- The media should refrain from any advocacy of national, racial or religious hatred that constitutes incitement to violence or to any other similar action;

- In many countries laws are in place, such as criminal defamation laws, which unduly restrict the right to freedom of expression. We urge States to review these laws with a view to bringing them into line with their international obligations;

- We affirm that States must ensure an effective, serious and impartial judicial process, based on the rule of law, in order to combat impunity of perpetrators of attacks against freedom of expression.

Abid Hussain
United Nations Special Rapporteur on
freedom of opinion and expression

Freimut Duve
OSCE Representative
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Santiago Canton
OAS Special Rapporteur on
freedom of expression

Annex II

THE PUBLIC'S RIGHT TO KNOW: PRINCIPLES ON FREEDOM OF INFORMATION LEGISLATION

June 1999

Principle 1. Maximum disclosure

Freedom of information legislation should be guided by the principle of maximum disclosure

The principle of maximum disclosure establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances (see principle 4). This principle encapsulates the basic rationale underlying the very concept of freedom of information and ideally it should be provided for in the Constitution to make it clear that access to official information is a basic right. The overriding goal of legislation should be to implement maximum disclosure in practice.

Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information. Everyone present in the territory of the country should benefit from this right. The exercise of this right should not require individuals to demonstrate a specific interest in the information. Where a public authority seeks to deny access to information, it should bear the onus of justifying the refusal at each stage of the proceedings. In other words, the public authority must show that the information which it wishes to withhold comes within the scope of the limited regime of exceptions, as detailed below.

Definitions

Both "information" and "public bodies" should be defined broadly.

Information includes all records held by a public body, regardless of the form in which the information is stored (document, tape, electronic recording and so on), its source (whether it was produced by the public body or some other body) and the date of production. The legislation should also apply to records which have been classified, subjecting them to the same test as all other records.

For purposes of disclosure of information, the definition of public body should focus on the type of service provided rather than on formal designations. To this end, it should include all branches and levels of Government, including local government, elected bodies, bodies which operate under a statutory mandate, nationalized industries and public corporations, non-departmental bodies or "quangos" (quasi non-governmental organizations), judicial bodies and private bodies which carry out public functions (such as maintaining roads or operating rail lines). Private bodies themselves should also be included if they hold information whose disclosure is likely to diminish the risk of harm to key public interests, such as the environment and health. Intergovernmental organizations should also be subject to freedom of information regimes based on the principles set down in this document.

Destruction of records

To protect the integrity and availability of records, the law should provide that obstruction of access to, or the wilful destruction of records is a criminal offence. The law should also establish minimum standards regarding the maintenance and preservation of records by public bodies. Such bodies should be required to allocate sufficient resources and attention to ensuring that public record-keeping is adequate. In addition, to prevent any attempt to doctor or otherwise alter records, the obligation to disclose should apply to records themselves and not just the information they contain.

Principle 2. Obligation to publish

Public bodies should be under an obligation to publish key information

Freedom of information implies not only that public bodies accede to requests for information but also that they publish and disseminate widely documents of significant public interest, subject only to reasonable limits based on resources and capacity. Which information should be published will depend on the public body concerned. The law should establish both a general obligation to publish and key categories of information that must be published.

Public bodies should, as a minimum, be under an obligation to publish the following categories of information:

- Operational information about how the public body functions, including costs, objectives, audited accounts, standards, achievements and so on, particularly where the body provides direct services to the public;

- Information on any requests, complaints or other direct actions which members of the public may take in relation to the public body;

- Guidance on processes by which members of the public may provide input into major policy or legislative proposals;

- The types of information which the body holds and the form in which this information is held; and

- The content of any decision or policy affecting the public, along with reasons for the decision and background material of importance in framing the decision.

Principle 3. Promotion of open government

Public bodies must actively promote open government

Informing the public of their rights and promoting a culture of openness within Government are essential if the goals of freedom of information legislation are to be realized. Indeed, experience in various countries shows that a recalcitrant civil service can undermine even the most progressive legislation. Promotional activities are, therefore, an essential

component of a freedom of information regime. This is an area where the particular activities will vary from country to country, depending on factors such as the way the civil service is organized, key constraints to the free disclosure of information, literacy levels and the degree of awareness of the general public. The law should require that adequate resources and attention are devoted to the question of promoting the goals of the legislation.

Public education

As a minimum, the law should make provision for public education and the dissemination of information regarding the right to access information, the scope of information which is available and the manner in which such rights may be exercised. In countries where newspaper distribution or literacy levels are low, the broadcast media are a particularly important vehicle for such dissemination and education. Creative alternatives, such as town meetings or mobile film units, should be explored. Ideally, such activities should be undertaken both by individual public bodies and a specially designated and adequately funded official body - either the one which reviews requests for information, or another body established specifically for this purpose.

Tackling the culture of official secrecy

The law should provide for a number of mechanisms to address the problem of a culture of secrecy within Government. These should include a requirement that public bodies provide freedom of information training for their employees. Such training should address the importance and scope of freedom of information, procedural mechanisms for accessing information, how to maintain and access records efficiently, the scope of whistle-blower protection, and what sort of information a body is required to publish.

The official body responsible for public education should also play a role in promoting openness within Government. Initiatives might include incentives for public bodies that perform well, campaigns to address secrecy problems and communications campaigns encouraging bodies that are improving and criticizing those which remain excessively secret. Another possibility is the production of an annual report to Parliament and/or parliamentary bodies on remaining problems and achievements, which might also include measures taken to improve public access to information, any remaining constraints to the free flow of information which have been identified and measures to be taken in the year ahead.

Public bodies should be encouraged to adopt internal codes on access and openness.

Principle 4. Limited scope of exceptions

Exceptions should be clearly and narrowly drawn and subject to strict "harm" and "public interest" tests

All individual requests for information from public bodies should be met unless the public body can show that the information falls within the scope of the limited regime of exceptions. A refusal to disclose information is not justified unless the public authority can show that the information meets a strict three-part test.

The three-part test:

- The information must relate to a legitimate aim listed in the law;

- Disclosure must threaten to cause substantial harm to that aim; and

- The harm to the aim must be greater than the public interest in having the information.

No public bodies should be completely excluded from the ambit of the law, even if the majority of their functions fall within the zone of exceptions. This applies to all branches of Government (that is, the executive, legislative and judicial branches) as well as to all functions of Government (including, for example, functions of security and defence bodies). Non-disclosure of information must be justified on a case-by-case basis.

Restrictions whose aim is to protect Governments from embarrassment or the exposure of wrongdoing can never be justified.

Legitimate aims justifying exceptions

A complete list of the legitimate aims which may justify non-disclosure should be provided in the law. This list should include only interests which constitute legitimate grounds for refusing to disclose documents and should be limited to matters such as law enforcement, privacy, national security, commercial and other confidentiality, public or individual safety, and the effectiveness and integrity of Government decision-making processes.

Exceptions should be narrowly drawn so as to avoid including material which does not harm the legitimate interest. They should be based on the content, rather than the type of the document. To meet this standard exceptions should, where relevant, be time-limited. For example, the justification for classifying information on the basis of national security may well disappear after a specific national security threat subsides.

Refusals must meet a substantial harm test

It is not sufficient that information simply fall within the scope of a legitimate aim listed in the law. The public body must also show that the disclosure of the information would cause substantial harm to that legitimate aim. In some cases, disclosure may benefit as well as harm the aim. For example, the exposure of corruption in the military may at first sight appear to weaken national defence but actually, over time, help to eliminate corruption and strengthen the armed forces. For non-disclosure to be legitimate in such cases, the net effect of disclosure must be to cause substantial harm to the aim.

Overriding public interest

Even if it can be shown that disclosure of the information would cause substantial harm to a legitimate aim, the information should still be disclosed if the benefits of disclosure outweigh the harm. For example, certain information may be private in nature but at the same

time expose high-level corruption within Government. In such cases, the harm to the legitimate aim must be weighed against the public interest in having the information made public. Where the latter is greater, the law should provide for disclosure of the information.

Principle 5. Processes to facilitate access

Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available

A process for deciding upon requests for information should be specified at three different levels: within the public body; appeals to an independent administrative body; and appeals to the courts. Where necessary, provision should be made to ensure full access to information for certain groups, for example those who cannot read or write, those who do not speak the language of the record, or those who suffer from disabilities such as blindness.

All public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information. Generally, bodies should designate an individual who is responsible for processing such requests and for ensuring compliance with the law.

Public bodies should also be required to assist applicants whose requests relate to published information, or are unclear, excessively broad or otherwise in need of reformulation. On the other hand, public bodies should be able to refuse frivolous or vexatious requests. Public bodies should not have to provide individuals with information that is contained in a publication, but in such cases the body should direct the applicant to the published source.

The law should provide for strict time limits for the processing of requests and require that any refusals be accompanied by substantive written reasons.

Appeals

Wherever practical, provision should be made for an internal appeal to a designated higher authority within a public authority who can review the original decision.

In all cases, the law should provide for an individual right of appeal to an independent administrative body from a refusal by a public body to disclose information. This may be either an existing body, such as an Ombudsman or Human Rights Commission, or one specially established for this purpose. In either case, the body must meet certain standards and have certain powers. Its independence should be guaranteed, both formally and through the process by which the head and/or board is/are appointed.

Appointments should be made by representative bodies, such as an all-party parliamentary committee, and the process should be open and allow for public input, for example regarding nominations. Individuals appointed to such a body should be required to meet strict standards of professionalism, independence and competence, and be subject to strict conflict-of-interest rules.

The procedure by which the administrative body processes appeals against requests for information which have been refused should be designed to operate rapidly and cost as little as is reasonably possible. This ensures that all members of the public can access this procedure and that excessive delays do not undermine the whole purpose of requesting information in the first place.

The administrative body should be granted full powers to investigate any appeal, including the ability to compel witnesses and, importantly, to require the public body to provide it with any information or record for its consideration, in camera where necessary and justified.

Upon the conclusion of an investigation, the administrative body should have the power to dismiss the appeal, to require the public body to disclose the information, to adjust any charges levied by the public body, to fine public bodies for obstructive behaviour where warranted and/or to impose costs on public bodies in relation to the appeal.

The administrative body should also have the power to refer to the courts cases which disclose evidence of criminal obstruction of access to or wilful destruction of records.

Both the applicant and the public body should be able to appeal to the courts against decisions of the administrative body. Such appeals should include full power to review the case on its merits and not be limited to the question of whether the administrative body has acted reasonably. This will ensure that due attention is given to resolving difficult questions and that a consistent approach to freedom of expression issues is promoted.

Principle 6. Costs

Individuals should not be deterred from making requests for information by excessive costs

The cost of gaining access to information held by public bodies should not be so high as to deter potential applicants, given that the whole rationale behind freedom of information laws is to promote open access to information. It is well established that the long-term benefits of openness far exceed the costs. In any case, experience in a number of countries suggests that access costs are not an effective means of offsetting the costs of a freedom of information regime.

Differing systems have been employed around the world to ensure that costs do not act as a deterrent to requests for information. In some jurisdictions, a two-tier system has been used, involving flat fees for each request, along with graduated fees depending on the actual cost of retrieving and providing the information. The latter should be waived or significantly reduced for requests for personal information or for requests in the public interest (which should be presumed where the purpose of the request is connected with publication). In some jurisdictions, higher fees are levied on commercial requests as a means of subsidizing public interest requests.

Principle 7. Open meetings

Meetings of public bodies should be open to the public

Freedom of information includes the public's right to know what the Government is doing on its behalf and to participate in decision-making processes. Freedom of information legislation should therefore establish a presumption that all meetings of governing bodies are open to the public.

"Governing" in this context refers primarily to the exercise of decision-making powers, so bodies which merely proffer advice would not be covered. Political committees - meetings of members of the same political party - are not considered to be governing bodies.

On the other hand, meetings of elected bodies and their committees, planning and zoning boards, boards of public and educational authorities and public industrial development agencies would be included.

A "meeting" in this context refers primarily to a formal meeting, namely the official convening of a public body for the purpose of conducting public business. Factors that indicate that a meeting is formal are the requirement of a quorum and the applicability of formal procedural rules.

Notice of meetings is necessary if the public is to have a real opportunity to participate and the law should require that adequate notice of meetings is given sufficiently in advance to allow for attendance.

Meetings may be closed, but only in accordance with established procedures and where adequate reasons for closure exist. Any decision to close a meeting should itself be open to the public. The grounds for closure are broader than the list of exceptions to the rule of disclosure but are not unlimited. Reasons for closure might, in appropriate circumstances, include public health and safety, law enforcement or investigation, employee or personnel matters, privacy, commercial matters and national security.

Principle 8. Disclosure takes precedence

Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed

The law on freedom of information should require that other legislation be interpreted, as far as possible, in a manner consistent with its provisions. Where this is not possible, other legislation dealing with publicly held information should be subject to the principles underlying the freedom of information legislation.

The regime of exceptions provided for in the freedom of information law should be comprehensive and other laws should not be permitted to extend it. In particular, secrecy laws should not make it illegal for officials to divulge information which they are required to disclose under the freedom of information law.

Over the longer term, a commitment should be made to bring all laws relating to information into line with the principles underpinning the freedom of information law.

In addition, officials should be protected from sanctions where they have, reasonably and in good faith, disclosed information pursuant to a freedom of information request, even if it subsequently transpires that the information is not subject to disclosure. Otherwise, the culture of secrecy which envelopes many governing bodies will be maintained as officials may be excessively cautious about requests for information, to avoid any personal risk.

Principle 9. Protection for whistle-blowers

Individuals who release information on wrongdoing - whistle-blowers - must be protected

Individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing.

"Wrongdoing" in this context includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body. It also includes a serious threat to health, safety or the environment, whether linked to individual wrongdoing or not. Whistle-blowers should benefit from protection as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing. Such protection should apply even where disclosure would otherwise be in breach of a legal or employment requirement.

In some countries, protection for whistle-blowers is conditional upon a requirement to release the information to certain individuals or oversight bodies. While this is generally appropriate, protection should also be available, where the public interest demands, in the context of disclosure to other individuals or even to the media.

The "public interest" in this context would include situations where the benefits of disclosure outweigh the harm, or where an alternative means of releasing the information is necessary to protect a key interest. This would apply, for example, in situations where whistle-blowers need protection from retaliation, where the problem is unlikely to be resolved through formal mechanisms, where there is an exceptionally serious reason for releasing the information, such as an imminent threat to public health or safety, or where there is a risk that evidence of wrongdoing will otherwise be concealed or destroyed.